TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 553

FEDERAL RESERVE BANK OF RICHMOND, PLAINTIFF IN ERROR,

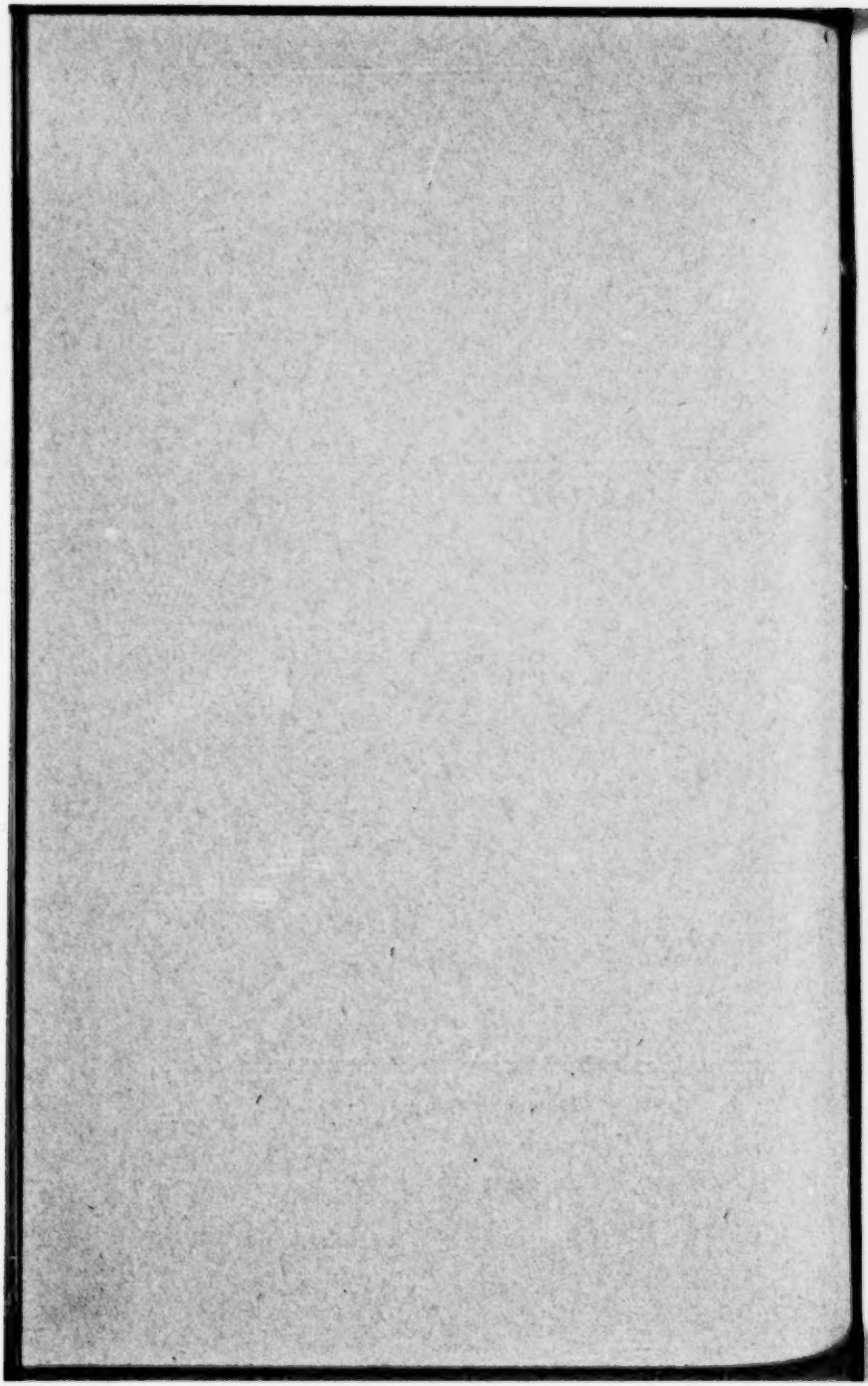
vs.

D. J. MALLOY AND J. H. MALLOY, TRADING AS MALLOY BROTHERS

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

FILED SEPTEMBER 18, 1923

(29,863)



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UNITED STATES OF AMERICA, ss:

At a United States Circuit Court of Appeals for the Fourth Circuit, begun and held at the Court House, in the City of Asheville, North Carolina, on the first Tuesday in July, being the third day of the same month, in the year of our Lord one thousand nine hundred and twenty-three.

Present: Hon. Charles A. Woods, Circuit Judge; Hon. Edmund Waddill, Jr., Circuit Judge; Hon. D. Lawrence Groner, District Judge.

Among other were the following proceedings, to-wit:

Federal Reserve Bank of Richmond, Plaintiff in Error

versus

D. J. Malloy & J. H. Malloy, Trading as Malloy Brothers, Defendants in Error.

In Error to the District Court of the United States for the Eastern District of North Carolina, at Raleigh.

Be it remembered that heretofore, to-wit, on March 22, 1923, the transcript of the record of the said District Court in the said entitled cause was transmitted to and filed in our said Circuit Court of Appeals here, which is as follows:

TRANSCRIPT OF RECORD

THE UNITED STATES OF AMERICA,
EASTERN DISTRICT OF NORTH CAROLINA, To-wit:

At a District Court of the United States for the Eastern District of North Carolina, begun and held at the Court House in the City of Raleigh, on the fourth Monday in November, being the 20th day of the same month, in the year of our Lord one thousand, nine hundred and twenty-two.

Present: The Honorable Henry G. Connor, District Judge for the Eastern District of North Carolina.

Among other were the following proceedings, to-wit:

D. J. Malloy & J. H. Malloy, Partners trading as Malloy Brothers,
vs.
Federal Reserve Bank of Richmond and Napier H. G. Balfour.
#923 Law.

COMPLAINT.

(2) Filed July 5, 1921, in Superior Court of Cumberland County.

NORTH CAROLINA,
Cumberland County. In Superior Court.

D. G. Malloy & J. H. Malloy, Partners trading as Malloy Brothers,
vs.
Federal Reserve Bank of Richmond and Napier H. G. Balfour.
Complaint.

The Plaintiffs complaining of the defendants, allege:

1. That the plaintiffs, D. G. Malloy and J. H. Malloy are partners trading under the firm name and style of Malloy Brothers, and were at the times hereinafter mentioned.

2. That, as they are informed and believe, the defendant, the Federal Reserve Bank of Richmond, is, and was at the times hereinafter mentioned, a corporation created, organized and existing by virtue of the "Federal Reserve Act" of December 23rd, 1913, and acts of Congress amendatory thereto, with its principal place of business in the city of Richmond, Va.

3. That the defendant, Napier H. G. Balfour, being indebted to the plaintiffs on the purchase price of land, did, on November 30th, 1920, mail his check to their order, at Quitman, Georgia, on the Bank of Lumber Bridge, Lumber Bridge, North Carolina, in the sum of Nine Thousand Dollars ($9,000.00), which was received by plaintiffs on December 2nd, and by them endorsed and deposited with the Perry Banking Company, at Perry, Florida, the next day.

4. That, as plaintiffs are informed and believe, the said Perry Banking Company duly forwarded said check to its correspondent in Jacksonville, Florida, the Atlantic National Bank, which in turn duly forwarded the same to its correspondent in Atlanta, Georgia, the Citizens & Southern Bank, which in turn fuly forwarded it to the defendant, the Federal Reserve Bank of Richmond.

(3) 5. That as plaintiffs are informed and believe, the defendant, Federal Reserve Bank of Richmond, negligently mailed said check direct to the said Bank of Lumber Bridge and negligently accepted in payment thereof the latter's draft on a bank in Greensboro, North Carolina, which check the drawee bank on December 14th, 1920, marked "Paid" and charged to the account of the drawer, and subsequently returned to the defendant, Napier H. G. Balfour.

6. That, as plaintiffs are informed and believe, the defendant, Napier H. G. Balfour, at the time said check

was charged against his account, to-wit: December 14th, 1920, had on deposit with said Bank of Lumber Bridge an amount sufficient to meet and pay said check of $9,000.00.

7. That the defendant, Federal Reserve Bank of Richmond, carelessly and negligently failed to notify plaintiffs that it had not received the money for said check until December 21st, 1920, after having already notified them that the said check had been lost in the mails, and that, as plaintiffs are informed and believe, had the defendant bank notified them of the non-payment of said check promptly, as it was its duty to do, they and the defendant Balfour could and would have collected the said check.

8. That on the 24th day of December, 1920, as plaintiffs are informed and believe, the said Bank of Lumber Bridge, N. C., was adjudged insolvent and a receiver appointed therefor, and he is now in charge of its assets and affairs.

9. That the defendant, Napier H. G. Balfour, denies that he is indebted to the plaintiffs, claiming his said debt has been paid by reason of the matters hereinbefore set forth.

10. That, as plaintiffs are advised, informed and believe, the defendant, Federal Reserve Bank of Richmond, acted as their agent, and that it was careless and negligent in sending said check direct to the drawee bank; in accepting its draft on the Greensboro Bank; in surrendering said check to the Bank of Lumber Bridge, N. C., without having collected the money therefor; in wrongfully notifying said plaintiffs that the said check had been lost in the mail; and in failing to notify (4) plaintiffs until December 21st, 1920, that it had not collected the money on said check; and that by reason of such carelessness and negligence of the defendant bank, the plaintiffs have been damaged, no part of the aforesaid $9,000.00 having been received by them.

Wherefore, Plaintiffs demand judgment against the defendant, Napier H. G. Balfour, for the sum of $9,000.00

and interest thereon from Nov. 30th, 1920, and the costs of this action, or in lieu thereof, for the said principal amount, and interest and costs against the defendant, the Federal Reserve Bank of Richmond, and for such other relief as they may be entitled to.

(s) SINCLAIR & DYE,
(s) BRANCH & SNOW,
Attorneys for Plaintiff.

STATE OF GEORGIA,
County of Brooks.

D. G. Malloy, one of the plaintiffs herein, being duly sworn, says that the foregoing complaint is true of his own knowledge except as to those matters and things therein alleged upon information and belief, and that, as to those, he believes it to be true.

D. G. MALLOY.

Sworn to and subscribed before me this 2nd day of July, 1921.

L. M. BRADFORD,
(Notarial Seal) Notary Public. (s)

My commission expires May, 1925.

ANSWER OF FEDERAL RESERVE BANK OF RICHMOND.

(5) Filed August 5, 1921.

The Federal Reserve Bank of Richmond answering the complaint of D. J. Malloy and J. H. Malloy, for answer, says:

I.

That this defendant does not waive its motion heretofore made to dismiss this action for lack of sufficient service of process on this defendant, but insists thereupon.

II.

Now specifically answering the complaint of the plaintiffs in this action this defendant says:

(1) This defendant admits the matters and things alleged in the first paragraph of the complaint.

(2) This defendant admits the matters and things alleged in the second paragraph of the said complaint.

(3) The defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraph three of the complaint and the same are therefore denied.

(4) This defendant is not informed as to whether or not the Perry Banking Company forwarded the check mentioned in the complaint to the Atlantic National Bank in Jacksonville, Florida, and, therefore, calls for strict proof of such fact, and also for proof of the terms and conditions upon which the said Atlantic National Bank received said check for collection. This defendant is informed and believes that the Atlantic National Bank of Jacksonville, Florida, forwarded said check for collection to the Citizens & Southern Bank, Atlanta, Ga., but alleged that said Citizens & Southern Bank received the said check for collection under an express contract concerning its liability and the liability of the sub-agents to which it might send such checks; such contract being as follows:

"Drafts and checks on a bank in town having no other bank may, in the absence of special instructions from the Depositor or Correspondent, be sent to such bank for collection. If the proceeds in cash or drafts, or checks on other banks, or other cash item, do not reach this bank, the credit given for them will be cancelled. The Bank receives drafts, cash items and Checks on other Banks, as a forwarder for collections only without liability for sub-agent, upon the above conditions, to which the Depositor or Correspondent hereby agrees.

THE CITIZENS AND SOUTHER BANK,
Atlanta, Ga.

All Foreign Items Credited Subject to Ultimate Payment."

(6) This defendant admits that the check mentioned in the complainant's bill of complaint was sent to this defendant by the Citizens & Southern Bank, Atlanta, Ga., but defendant says that in so sending it the Citizens & Southern Bank acted for and on behalf of the Federal Reserve Bank of Atlanta, and that in receiving said check this defendant received it for the account and credit of the Federal Reserve Bank of Atlanta in accordance with the regulations of the Federal Reserve Board regulating the liability between Federal Reserve Banks and member banks, which regulations will be more fully set forth below.

(5) Defendant admits that it mailed the said check to the Bank of Lumber Bridge and admits that it accepted from the Bank of Lumber Bridge in settlement for this check and other checks sent to it by this defendant a certain draft of the Bank of Lumber Bridge dated December 14, 1920, drawn on the Atlantic Bank & Trust Co., Greensboro, N. C., for the sum of $9,204.90, but this defendant denies that in so sending said check directly to the Bank of Lumber Bridge or in so accepting such draft of the Bank of Lumber Bridge it was in any way negligent and says that it was authorized to do so by the regulations of the Federal Reserve Board above referred to, and the contracts existing between itself and the Federal Reserve Bank of Atlanta, and between the Federal Reserve Bank of Atlanta and the Citizens & Southern Bank of Atlanta, as will be hereafter more fully set forth. This defendant has no knowledge or information sufficient to form a belief as to whether or not a check for $9,000.00 was marked "Paid" and charged to the account of the co-defendant, Napier H. G. Balfour, and the same is therefore denied.

(6) This defendant has no knowledge or information sufficient to form a belief as to whether or not the defendant, Napier H. G. Balfour, had on deposit with the said Bank of Lumber Bridge an amount sufficient to meet and pay said check for $9,000.00, and denies this allegation.

(7) This defendant denies that it carelessly and negligently failed to notify the plaintiffs that it had not received the money for the check mentioned in the said complaint, and alleges that as soon as this defendant discovered that the Bank of Lumber Bridge could not pay the said check and that the draft of the Bank of Lumber Bridge given in payment thereof was not good and could not be collected, this defendant notified the Citizens & Southern Bank of Atlanta, Ga., that the check was not paid, and this defendant says that it used due diligence to collect the said check and the draft of the Bank of Lumber Bridge, which it received in settlement, and denies that the plaintiffs or Balfour could or would have collected the said check.

(8) This defendant admits that the Bank of Lumber Bridge was adjudged insolvent and a receiver appointed therefor in the month of December, 1920, and admits that such receiver is now in charge of its assets.

(9) This defendant is not informed concerning the allegations of paragraph nine of the said complaint, and, therefore, calls for strict proof of the same.

(10) This defendant denies that it acted as the agent of the plaintiffs in this case, and says that it acted as the agent of the Federal Reserve Bank of Atlanta, which was acting as the agent of the Citizens & Southern Bank of Atlanta, Ga., and this defendant denies says that in all its actions and doings in handling the said check for $9,000.00, in surrendering the same to the Bank of Lumber Bridge, and in accepting the draft of the said Bank of Lumber Bridge is used due diligence and was guilty of no negligence, and that it notified the Citizens & South-
(7) ern Bank, Atlanta, Ga., as soon as possible after this defendant knew, or by the exercise of diligence could have known, that the Bank of Lumber Bridge could not pay the said check.

III.

(1) And now by way of further answer and affirmative defense the defendant says that the Federal Reserve Act, under which this defendant is organized and

under which it does business, authorized this defendant and other Federal Reserve Banks to receive for collection from member banks within its own district checks and drafts payable upon presentation, and that it is authorized to receive from other Federal Reserve Banks checks and drafts payable upon presentation within its district. The Citizens & Southern Bank is located within the City of Atlanta, Ga., and is not within the Federal Reserve district of this defendant, but is within the Federal Reserve district of the Federal Reserve Bank of Atlanta, and this defendant says, therefore, it is not authorized to open an account directly with the Citizens & Southern Bank of Atlanta, but that for the convenience of that bank and of itself and of the Federal Reserve Bank of Atlanta it has agreed that the Citizens & Southern Bank may mail to the Federal Reserve Bank of Richmond checks and drafts payable within the Federal Reserve district of the Federal Reserve Bank of Richmond, which includes the State of North Carolina, and that such checks and drafts, if and when collected, shall be credited to the Federal Reserve Bank of Atlanta for the account of the Citizens & Southern Bank, but that such checks and drafts are deemed to have been received from the Federal Reserve Bank of Atlanta just as though they had been sent by the Citizens & Southern Bank of Atlanta to the Federal Reserve Bank of Atlanta and by the Federal Reserve Bank of Atlanta sent to the Federal Reserve Bank of Richmond.

This defendant says that the Federal Reserve Board is, by the Federal Reserve Act, authorized to establish regulations concerning the clearing and collection of checks received by Federal Reserve Banks from their member banks and other Federal Reserve Banks, and that in the exercise of such power the Federal Reserve Board has made and promulgated a certain regulation known as Regulation J, Series of 1920, which reads in part as follows:

"In handling items for member and nonmember clearing bank, a Federal Reserve Bank will act as agent only. The Board will require that each member and nonmember clearing bank authorize its Federal Reserve Bank to send checks for collection to banks on which checks are drawn, and, except for negligence, such Fed-

eral Reserve Bank will assume no liability. Any further requirements that the Board may deem necessary will be set forth by the Federal Reserve Banks in their letters of instruction to their member and nonmember clearing banks. Each Federal Reserve Bank will also promulgate rules and regulations governing the details of its operations as a clearing house, such rules and regulations to be binding upon all member and nonmember banks which are clearing through the Federal Reserve Bank."

(2) The defendant is informed, believes and charges that the Citizens & Southern Bank of Atlanta, Ga., had agreed with the Federal Reserve Bank of Atlanta that all checks received by the Federal Reserve Bank of Atlanta from the Citizens & Southern Bank, whether actually sent to the Federal Reserve Bank of Atlanta or sent to this defendant or other Federal Reserve Banks for the credit of the Federal Reserve Bank of Atlanta, should be handled in accordance with the above mentioned section of the Regulations of the Federal Reserve Board, and had especially agreed that all such checks should be sent for collection to the banks upon which they were drawn, and that the Federal Reserve Bank of Atlanta and this defendant should assume no liability, except for negligence.

(8) (3) This defendant says that it in order to collect such checks as it might receive upon the Bank of Lumber Bridge that it would send to such bank all checks which this defendant received upon the Bank of Lumber Bridge, and that the Bank of Lumber Bridge would, upon the day of receipt, return such checks as it was unwilling to pay and would remit for such checks as it desired to pay by means of its good exchange draft drawn upon some bank with which the Bank of Lumber Bridge kept an account and in which it had funds upon deposit.

(4) This defendant says that the check for $9,000.00 was received by this defendant from the Citizens & Southern Bank, Atlanta, Ga., in a certain letter dated December 8th, and received by this defendant on December 10th, and that upon December 10th this defendant enclosed the said check for $9,000.00 so received, along

with other checks, and sent the same to the Bank of Lumber Bridge in a letter dated and mailed on December 10th; and this defendant says that on December 14th the Bank of Lumber Bridge sent to this defendant a draft for the sum of $9,204.90, drawn by the Bank of Lumber Bridge on the Atlantic Bank & Trust Co., in Greensboro, N. C., which draft was sent in settlement for checks contained in the letter of December 10, 1921, above referred to.

(5) This defendant says that the above mentioned draft of the Bank of Lumber Bridge for the sum of $9,204.90 was received by it on December 15, and upon that day sent to the Atlantic Bank & Trust Co., Greensboro, N. C., for payment, and that the bank upon December 17th, advised this defendant that said draft for $9,204.90 was not good, whereupon this defendant immediately called upon the Bank of Lumber Bridge to make the same good and that bank assured this defendant that it would do so; but, nevertheless, failed to do so, and this defendant says that as soon as it discovered that the Bank of Lumber Bridge could not make good the above mentioned draft for $9,204.90 it notified the Citizens & Southern Bank, Atlanta, Ga., that this defendant had not received payment for the check for $9,000.00 received from the Citizens & Southern Bank of Atlanta, and this defendant immediately sent a special representative to endeavor to collect this money from the Bank of Lumber Bridge, but failed to do so because the said Bank of Lumber Bridge did not have available funds sufficient to pay the said sum.

This defendant is now holding the above mentioned draft for $9,204.90 as the agent and trustee of the Citizens & Southern Bank of Atlanta, Ga., and other correspondents of this defendant whose checks were contained in its letter of December 10th to the Bank of Lumber Bridge, and this defendant denies that it is responsible to the Citizens & Southern Bank of Atlanta, Ga., or to the plaintiffs in this action, or to any other person for the amount of the said check for $9,000.00, or for any other amount, except to the extent that this defendant may receive dividends from the receiver of the Bank of Lumber Bridge upon the above mentioned draft for

$9,204.90, and this defendant says that it has as yet received no dividends upon the said draft.

Wherefore, this defendant prays that the plaintiffs take nothing by this action and that it go without day and recover herein its costs.

THE FEDERAL RESERVE BANK OF RICHMOND,
By J. C. LITTLE,
M. G. WALLACE, Attorneys for Defendant.

STATE OF VIRGINIA,
(9) City of Richmond, To-wit:

Chas. A. Peple, being duly sworn, deposes and says that he is an officer of the Federal Reserve Bank of Richmond, to-wit, Deputy Governor of the Federal Reserve Bank of Richmond, and that the matters and things in the foregoing answer are true of his own knowledge, except to those matters and things therein alleged upon information and belief, and that, as to those, he believes them to be true.

CHAS. A. PEPLE.

Sworn to and subscribed before me this 2nd day of August, 1921.

C. VERSAL BLACKBURN.

My commission expires 26th day of Feb., 1924.

ANSWER OF NAPIER H. G. BALFOUR.

(10) Filed Dec. 14, 1921.

The defendant, Napier H. G. Balfour, answering the complaint herein, alleges:

1. That the allegations in Article One are admitted.

2. That the allegations in Article Two are admitted.

3. That the allegations in Article Three are admitted.

4. That the allegations in Article Four are admitted.

5. That the allegations in Article Five are admitted.

6. That the allegations in Article Six are admitted.

7. That the allegations in Article Seven are addditted.

8. It is admitted that the Bank of Lumber Bridge, under an order of its board of directors, suspended business on the 24th day of December, 1920, and that thereafter it was adjudged insolvent and a receiver appointed.

9. That the allegations in Article Nine are admitted.

10. That the allegations in Article Ten are admitted.

And by way of further defense, this defendant alleges:

1. That when he drew the said check for $9,000 on the 30th of November, 1920, in favor of the plaintiffs, and mailed it to them and continuously thereafter until the 14th day of December, 1920, he had on deposit in the Bank of Lumber Bridge to his credit on open account a sufficient amount of money to pay the said sum, and on the 14th day of December, 1920, the said check was charged to his account by the Bank of Lumber Bridge, marked by it "paid", and thereafter returned to this defendant in the regular course of business; At that time (11) this defendant had not idea that the Bank of Lumber Bridge was in an unsound condition, or contemplating suspending business, and that the said bank continued in business for ten days thereafter, during which time this defendant received no notice, intimation or suggestion that the payment of the said check was in any manner irregular, or would or could in any manner be questioned; And if this defendant had been notified that there was any irregularity or any question about the payment of said check, he would have had ample time to, and would have protected himself against any loss on account thereof.

2. That at the time the said check was drawn, and at the time it was presented, this defendant had on deposit with the Bank of Lumber Bridge a sufficient amount to pay the same, and the same, when presented, was paid, charged to the account of this defendant, and surrendered in the regular course of business, and thereupon the indebtedness of this defendant to the plaintiffs to the extent of the said check became fully paid and satisfied, and if the plaintiffs, or those acting for them, having selected the Bank of Lumber Bridge as the agency through which the funds so paid by this defendant should be transmitted to them, saw fit to accept from said bank, in payment therefor, anything other than cash, or its equivalent, such transaction between the plaintiffs, or those acting for them, and the Bank of Lumber Bridge is one with which this defendant is not concerned, and he alleges that his indebtedness to the plaintiffs to the extent of the said check has been paid, and that they are entitled to recover nothing from him on account of the matters and things set forth in the complaint.

Wherefore, having fully answered, this defendant demands judgment that he go hence without day and recover his costs in this behalf expended.

J. BAYARD CLARK,
Attorney for Napier H. G. Balfour.

NORTH CAROLINA,
Robeson County.

Napier H. G. Balfour, one of the defendants, being duly sworn, says that the foregoing answer is true of his own knowledge, except as to those matters and things therein alleged upon information and belief, and that, as (12) to those, he believes it to be true.

NAPIER H. G. BALFOUR.

Sworn to and subscribed before me this 2nd day of Dec., 1921.

A. F. TOLAR,
(Seal) Notary Public.

My commission expires 3-14-23.

STIPULATION OF COUNSEL WAVING TRIAL BY JURY.

(13) Filed March 10, 1922.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA.

D. G. Malloy & J. H. Malloy, Partners, trading as Malloy Brothers,

vs.

Federal Reserve Bank of Richmond and Napier H. G. Balfour.

It is hereby stipulated and agreed between the parties, by Counsel, that all issues of fact in the above entitled case may be tried by the Court without a jury, and finding of the Court upon the facts shall have the same effect as the verdict of a jury.

It is further stipulated and agreed that judgment may be entered either in term time or vacation, and that any party shall have thirty days after the entry of such judgment to prepare and present bills of exception.

Given under our hands this 10th day of March, 1922.

SINCLAIR & DYE,
Counsel for D. G. Malloy and J. H. Malloy, trading as Malloy Brothers.
J. BAYARD CLARK,
Counsel for Napier H. G. Balfour.
J. C. LITTLE,
M. G. WALLACE,
Counsel for Federal Reserve Bank of Richmond.

OPINION OF THE COURT.

(14) Filed July 8, 1922.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA.
AT RALEIGH.

D. J. Malloy and J. H. Malloy, Trading as Malloy Brothers,
vs.
Federal Reserve Bank of Richmond and Napier H. G. Balfour.
No. 923.

Sinclair & Dye, of Fayetteville, N. C., for Plaintiff; and M. G. Wallace, of Richmond, Va., and Little & Barnes, of Raleigh, N. C., for Defendant, Federal Reserve Bank; McCormick & Clark, of Fayetteville, N. C., for defendant Balfour.

CONNOR, District Judge:

Action for recovery of amount of check alleged to have been lost by negligence of defendant, in course of collection.

The parties waived trial by jury and submitted the case to the Court to find the facts and render judgment thereon.

The evidence disclosed the following facts:

Defendant, Napier H. G. Balfour, on November 30, 1920, drew and sent to plaintiffs by mail at Quitman, Georgia, his check for Nine Thousand Dollars ($9,000.00) on the Lumber Bridge Bank, a duly chartered and organized corporation authorized to carry on the business of banking at Lumber Bridge, North Carolina, to be applied to the credit of his indebtedness to plaintiffs, evidenced by his note, secured by mortgage on real estate situated in North Carolina.

(15) Plaintiffs received the check on the morning of December 1st, 1920, credited the amount on Balfour's note, and sent the check properly endorsed, with a deposit slip, on same day to Perry Banking Company at Perry, Florida, at which place said Banking Company was engaged in the banking business.

The Perry Banking Company, on December 3rd, received the check for collection and credit and, on the next day, sent to plaintiff a credit card on which was printed, "Checks, drafts, etc., received for collection or deposit, are taken at the risk of the endorser until actual payment is received."

The Perry Banking Company, on the same day, endorsed and sent the check to the Atlantic National Bank of Jacksonville, Florida, and on December 6, 1920, said Bank endorsed and sent it to the branch of Citizens and Southern Bank at Atlanta, Georgia.

The said Bank, December 8th, 1920, endorsed the check with the double endorsement stamp of itself and the Federal Reserve Bank of Atlanta, and sent it to the

Federal Reserve Bank of Richmond for collection and credit to the Federal Reserve Bank of Atlanta, Georgia, the Citizens and Southern Bank of Atlanta being a member of the Reserve Bank of Atlanta, Georgia.

On December 10, 1920, the Federal Reserve Bank of Richmond, sent to the Bank of Lumber Bridge a letter containing the Balfour, and several other checks, drawn upon said bank, aggregating $9,356.44 for collection and remittance. This letter, by due course of mail between Richmond and Lumber Bridge, should have been received by the Bank of Lumber Bridge on Saturday, December 11th, 1920. On Tuesday, December 14th, the Cashier of the Lumber Bridge Bank, stamped the Balfour check "Paid" and charged it to the account of Balfour on which there was to his credit, subject to check, $9,204.90.

On the same day the Lumber Bridge Bank drew and mailed to the Federal Reserve Bank of Richmond, its check on the Atlantic Banking and Trust Company of Greensboro, North Carolina, for the sum of $9,204.90, the aggregate amount of the checks sent to said bank by the Federal Reserve Bank of Richmond, in its letter of December 16th, less the amount of checks on said Bank for which the drawers did not have balances sufficient to
(16) pay.

The Federal Reserve Bank of Richmond received said letter, containing the check December 15th, 1920, and on same day forwarded the check to the drawee, Atlantic Banking & Trust Company, of Greensboro, North Carolina, for payment. On December 17, 1920, the Atlantic Banking & Trust Company, wired the Federal Reserve Bank of Richmond that the Lumber Bridge Bank did not have sufficient funds to its credit to pay said check.

The defendant, Richmond Bank, on the same day, wired the Lumber Bridge Bank notice of the dishonor of its check, calling upon said Bank to make the check good, which wire the Lumber Bridge Bank answered promising to do so.

Upon its failure to make the check good, the defendant, Richmond Bank, sent a representative to Lumber Bridge who reached there on the morning of December 20th, 1920, being Monday, saw the Cashier of the Lumber Bridge Bank and demanded payment of the check

on the Greensboro Bank. The Cashier stated that the Bank did not have sufficient funds to pay the amount of its dishonored check on the Greensboro Bank. That the Directors of the Bank would meet that night and make an effort, by endorsing a note of the Bank to the Bank of Lumberton, North Carolina, upon which the Bank would be able to secure funds with which it could pay the amount of the dishonored check.

On Tuesday morning, December 21, 1920, the Cashier of the Lumber Bridge Bank informed the representative of defendant, Richmond Bank, that the Directors refused to endorse the note with which to secure the funds and that he could not pay, or take up, the check. Defendant, the Federal Reserve Bank of Richmond, on the same day, wired the Citizens and Southern Bank of Atlanta, that the Balfour-Malloy check was unpaid and on the same day sent a letter to said Bank, stating the facts in connection therewith, and that the amount of the check Nine Thousand Dollars ($9,000.00) would be charged to the account of said Bank if the check of the Lumber Bridge Bank was not ultimately paid. Malloy Brothers were promptly notified of the situation. Upon being notified by Malloy, Balfour was informed by the Cashier of the Lumber Bridge Bank that he could not make the check on Greensboro good. Upon appropriate proceedings under the North Carolina statutes, on December 24, 1920, the Lumber Bridge Bank was closed and its assets placed in the custody of a Receiver.

The defendant, Richmond Bank, charged the amount (17) of the check to the Federal Reserve Bank of Atlanta, which charged same to the Citizens and Southern Bank. The several Banks handling the check charged the amount to their several correspondents until it was charged back to Malloy Brothers by the Perry Banking Company. At the date of the institution of this action no dividends had been paid by the Receiver. The defendant, Federal Reserve Bank of Richmond, retained the check on Greensboro. Upon the trial it was stated that there was reasonable cause to believe that a dividend of 75% would be paid.

The Bank of Lumber Bridge was not a member of the Reserve Bank system, but had, prior to the date of this transaction, pursuant to the Regulations of the Federal Reserve Board (October, 1920, Regulation J) en-

tered into an arrangement with said bank for the collection of checks drawn upon it, at par. The Regulation (1) provides that, "Each Federal Reserve Bank will receive at par from its member banks and from non member clearing banks, in its district, checks drawn on all member and non member clearing banks, and on all other non member banks which agree to remit at par through the Federal Reserve Bank of this District. The same privilege is extended to (2) "Federal Reserve Banks to receive checks for collection from other Federal Reserve Banks and from all member and non member clearing banks regardless of their location.

. . . Checks drawn upon all member and non member clearing banks of its district and upon all other non member banks of its district whose checks are collected at par by the Federal Reserve Bank."

This action was brought in the Superior Court of Cumberland County, North Carolina, and upon petition of defendant Bank, removed into this Court. Plaintiffs, following the allegations covered by the foregoing facts, allege:

"That as plaintiffs are informed and believe, the defendant, Reserve Bank of Richmond, negligently mailed said check to the said Bank of Lumber Bridge, and negligently accepted in payment thereof the latter's draft on a Bank in Greensboro, North Carolina, which check the drawee bank on December 14, 1920, marked "Paid" and charged to the account of the drawer, and subsequently charged to the defendant, Napier H. G. Balfour."

"That Balfour had, at the time said check was charged against his account, to-wit: December 14, 1920, (18) on deposit with said Bank of Lumber Bridge an amount sufficient to pay said check of Nine Thousand Dollars ($9,000.00)."

"That the defendant, Federal Reserve Bank of Richmond, carelessly and negligently failed to notify plaintiffs that it had not received the money for said check until December 21, 1920. . . . and that, as plaintiffs are informed and believe, had the defendant bank notified them of the non-payment of said check promptly, as it was its duty to do, they and the defendant Balfour could and would have collected the said check."

"That, as plaintiffs are informed and believe the defendant, Federal Reserve Bank of Richmond, acted as their agent, and that it was careless and negligent in sending said check direct to the drawee bank; in accepting its draft on the Greensboro Bank, in surrendering said check to the Bank of Lumber Bridge, North Carolina, without having collected the money therefor; and in failing to notify plaintiffs until December 21st, 1920, that it had not collected said check."

In the light of these allegations several of the questions discussed by counsel become immaterial.

Defendant's counsel insist that plaintiffs cannot maintain the action because there is no contractual relation, or privity of contract, between plaintiffs and defendant, the Federal Reserve Bank of Richmond. This argument is based upon the theory that the check became the property of the Perry Banking Company upon its deposit, or that said Banking Company was not authorized, by the deposit of the check for collection, to appoint sub-agents for that purpose and that such other banks as it transmitted the check to became its agents and not the agents of the owners of the check. This view was, upon the facts in that case, adopted by the Supreme Court of Florida in *Brown* vs. *Peoples Bank*, 59 Florida 163; 52 So. 719; 52 L. R. A. N. S. 608. It is not necessary to do more than refer to the very interesting and learned discussion by Chief Justice Whitfield in that case because he states, at the conclusion of his opinion, that since the transaction, out of which that case arose, but before the decision, the legislature of Florida enacted a statute by which it is provided that:

"When a check is deposited in a bank for collection, it shall be considered due diligence on the part of (19) the bank in the collection of any check, etc., so deposited to forward, *en route*, the same, without delay, in the usual commercial way in use according to the regular course of business of banks and that the maker, etc., shall not be liable to the bank until actual payment is received."

For the purpose of this discussion the statute authorized the Perry Banking Company to employ subagents in making collection of the check, with the re-

sult that such sub-agents became the agents of the owner of the check. This statute crystallizes into positive law of the State, the rule which has been adopted in other jurisdictions as the proper method to be pursued and the extent of liability of collecting banks in such cases. This principle has been clearly stated by Judge Bynum, upon the authority of *Fabens* vs. *Mercantile Bank*, 23 Pick. 330; *Bank* vs. *Bank*, 75 N. C. 534, that:

"It is well settled that, when a note is deposited with a bank for collection, which is payable at another place, the whole duty of the bank so receiving the note in the first instance, is seasonably to transmit the same to a suitable bank or other agent at the place of payment. And as a part of the same doctrine, it is well settled that if the acceptor of a bill or promissor of a note has his residence in another place, it shall be presumed to have been intended and understood between the depositor for collection and the bank that it was to be transmitted to the place of residence of the promissor." The rule is stated, with citation of authorities pro and con, in 2 Michie on Banks and Banking, Section 162 (2). This rule is usually referred to as the "Massachusetts Rule". In *Exchange National Bank* vs. *Third National Bank*, 112 U. S. 276, Justice Blatchford said:

"The authorities which support this rule rests on the proposition that, since what is to be done by a bank employed to collect a draft, payable at another place, cannot be done by any of its ordinary officers or servants, but must be entrusted to a sub-agent, the risk of the neglect of the sub-agent is upon the party employing the bank, on the view that he has implied authority to employ the sub-agent," citing *Dorchester Bank* vs. *New England Bank*, 1 Cush. (55 Mass.); *Milling Co.* vs. *Kuester*, 158 Ill. and many other decisions.

The result of this rule is that the sub-agent selected by the bank undertaking to collect the check, becomes the (20) agent of the owner of the check, thus establishing the contractual relation between the owner and such sub-agent and entitling the owner to sue either of the sub-agents for breach of duty. *Bank* vs. *Floyd*, 142 N. C.

163; *Winchester* vs. *Milling Co.*, 120 Tenn. 225; Ill. S. W. 248.

It is in recognition of this principle that plaintiffs sue the defendant, Federal Reserve Bank of Richmond, alleging the relation of principal and agent and breach of duty, in that the defendant, Federal Reserve Bank, negligently sent the Balfour check for collection to the drawee Bank of Lumber Bridge thus eliminating several questions discussed by counsel and narrowing the controversy to two questions:

1st. Was the defendant, Richmond Bank, negligent in sending the check to the drawee bank for collection?

2nd. Was the defendant guilty of negligence in accepting the check of the Bank of Lumber Bridge on the Greensboro Bank in payment of the Balfour check?

From this viewpoint no question respecting the manner or time in which the Perry Banking Company and its sub-agents, forwarded the check to the several banks and presented it to the drawee for payment. It will tend to simplification of the issues raised by the pleadings and the facts, in respect to which there is no controversy, to ascertain the extent of the liability of defendant bank, by regarding the relation between the parties to this action, as principal and agent, as alleged by plaintiffs.

Approached from this viewpoint, the first question for decision is, whether the defendant, Federal Reserve Bank, was negligent in the discharge of its duty by sending the check to the drawee Bank of Lumber Bridge. This question has been the subject of much discussion, resulting in differing conclusions. The general principle is stated in Michie on Banks and Banking, 2 Vol., Section 162 (1 b) with citation of authorities. The Supreme Court of North Carolina in *Bank* vs. *Floyd*, 142 N. C. 163, held that it was negligent in a bank, having a draft for collection to send it directly to the drawee; that the fact that the drawee was the only bank at the place of payment did not affect the principle, and that no custom (21) to the contrary would excuse the sending bank. The writer of this opinion, writing for the Court, in that

case, gave the subject careful investigation and cited the controlling authorities. The legislature of North Carolina, however, at its Session of 1919, Public Laws, Ch. 11, now Section 233, Consolidated Statutes, changed the law in that respect, by enacting a statute providing that "Any banking corporation or banking or trust company, doing a fiduciary business in this State receiving for collection or deposit any check . . . . drawn upon, or payable at, any other bank, located in another city or town, within or without this State, may forward such instrument for collection directly to the bank on which it is drawn or at which it is payable, and such method of forwarding direct to the payer shall be deemed due diligence; and the failure of such payer bank, because of its insolvency or other default, to account for the proceeds thereof, shall not render the forwarding bank liable therefor, provided such forwarding bank shall have used due diligence in other respects in connection with the collection of such instrument. The provisions of this Act shall not apply where there is more than one bank in a town."

Plaintiffs insist that the defendant, Federal Reserve Bank of Richmond, is not within the terms of this statute, and can claim no immunity under its provisions, because it is not a banking corporation or banking or trust company "doing a fiduciary business in this State."

I incline to an agreement with plaintiffs' contention that the statute was intended, and its terms apply only to banks organized and doing business in the sense of having its principal office, in this State. It is a well settled principle adopted in the construction of statutes, that their provisions in respect to persons coming within their scope, are confined to citizens or corporations resident in the State, unless otherwise clearly expressed.

This question, however, becomes immaterial, in this case, because Regulation J (8) made by the Federal Reserve Board provides that:

"In handling items for member and non member clearing banks, a Federal Reserve Bank will act as agent only. The Board will require that each member and non member clearing bank authorize its Federal Reserve Bank to send checks for collection to banks on

(28) which checks are drawn and except for negligence, such Federal Reserve Bank will assume no liability."

This regulation, to the extent of its permissive provisions, must be taken to have been known to the Citizens and Southern Bank of Atlanta and the Federal Reserve Bank of Atlanta. The check was sent by them and received for collection by the defendant, Reserve Bank of Richmond, subject to the regulation which permitted the Richmond Bank to send the check to the drawee Bank of Lumber Bridge. This was done promptly—the check was mailed at Atlanta, December 8th, mailed by the defendant, Federal Reserve Bank, December 10th, 1920, and received by the Lumber Bridge Bank, December 11th, 1920, bing Saturday.

The Lumber Bridge Bank was the only Bank in the town at Lumber Bridge. There is no suggestion that, at that time, it was not in good standing and credit, or that defendant, Federal Reserve Bank of Richmond, had any cause to question its solvency or manner of conducting its business. It had made "a par collection" agreement with defendant Bank.

I am led to the conclusion that the defendant, Federal Reserve Bank of Richmond, was not negligent in sending the check to the Lumber Bridge Bank for collection, and that it acted in that respect, promptly and in accordance with the terms upon which it accepted and undertook to act as agent in collecting the check.

We are thus brought to the last and determinative averment of negligence; the acceptance by the defendant, Federal Reserve Bank of Richmond, of the check of the Lumber Bridge Bank on the Greensboro Bank. Preliminary to the decision of this question, it becomes material to ascertain what effect the conduct of the Lumber Bridge Bank had upon the status of the Balfour check and his libality thereon as drawer.

In *Bank* vs. *Floyd*, *supra*, it was conceded that, by charging the check to the account of the drawer, its depositor, who had to his credit a balance sufficient to pay it and cancelling it, by the Dunn Bank, occupying in that case, *pro hac vice* the position of the Lumber Bridge Bank, the check was paid and the drawer released.

In *Bank* vs. *South Weymouth Bank*, 184 Mass. 49, the note of a customer of the defendant bank, payable at that bank, and due, was sent by the holder, endorsed "for collection and remittance" to the defendant bank. (23) The makers of the note had to their credit and subject to check in the defendant bank, an amount sufficient to pay the note. Describing the conduct of the cashier of the defendant bank, Hammond, J., says:

"He intends as agent of the makers to pay this note to his own bank, the indorsee and holder, and as such entitled to receive payment and discharge the note. He intends as cashier of his own bank to cancel and discharge the note when paid, and then as agent of the makers to hold the paid note for them. After the note has been paid he intends to send the proceeds to the plaintiff. With these intentions he begins. The note is before him. He first draws on a bank in Boston his check as Cashier of the defendant, payable to the order of the plaintiff, for the amount of the proceeds of the note. It is to be observed that this is not the check of the makers, nor is it made by the Cashier as their agent, but in his capacity as agent of the defendant, and in the performance, not of a duty owed by the makers, but of a duty owed by the defendant to the plaintiff. It is not the check by which the note was paid, because none was needed, but was the check by which the proceeds were to be transmitted by the defendant to the plaintiff. He then makes a memorandum of this check upon a block, stamps upon the face of the note, "Paid Oct., 1901", and perforates it in three places, and puts the note, thus stamped and mutilated, in the file with his checks so that a proper record of the transaction may be entered at the end of the day upon the permanent books. The Cashier, at this time, was called to the 'phone and notified that the makers of the note have made an assignment for the benefit of creditors and is requested by the assignee to hold the account. He withheld the check which he had drawn and undertook to retrace his steps."

In an action by the Bank, owning and sending the note to the defendant Bank, for the proceeds of the note, "in assumpsit for money had and received", the Court held that "prior to the call to the telephone, the note had been paid by the makers to the deefndant and that

the only remaining duty resting upon the defendant was to remit the proceeds to the plaintiff . . . . The note was itself equivalent to a check . . . . When the Bank, through its cashier, wrote upon the face of the note, in its own name, as the indorsee and holder, that it was paid, and perforated it and put it in the files as a thing paid, nothing more was to be done as to the payment. (24) By those acts there had been set apart and appropriated, to the payment of the note, so much of the deposit then standing to the credit of the makers as was sufficient for that purpose, just as though the makers had presented to the bank their check in payment of a note due it from them." With appropriate changes and arrangement of the parties, the case is, in all essential respects, on "all fours" with the instant case and the conclusion irresistable the same to which the Massachusetts Court came.

The same conclusion was reached by the Supreme Court of Tennessee in *Milling Company* vs. *Black*, 120 Tenn. 225, in which it was held that: "When a check given by a debtor on a certain bank in payment of his debt, was by another bank acting as collector for the creditor and payee, forwarded for collection or payment, to the drawee bank, in which there was more than enough money on deposit to the credit of the drawer at the time the check arrived there to pay the same, whereupon the drawee bank drew its draft upon another bank for the amount of the check and forwarded the same to the collecting bank and charged, cancelled and surrendered the check to the drawer, he was thereby discharged from liabitlity on the debt." In that case it was held that the owner of the original check, by receiving the worthless check, ratified its acceptance by the collecting bank. *Corporation Commission* vs. *Bank*, 137 N. C. 697.

It is well settled by these, and other, authorities, as well as upon principle, that when the Cashier of the Lumber Bridge Bank stamped the check "Paid", charged it to his account and delivered it to Balfour, who had to his credit, subject to his check, an amount more than sufficient to pay his check, that the check was paid and his liability as maker or drawer discharged.

The Lumber Bridge Bank on December 14th, 1920, had credit balances as follows: Atlantic Banking and Trust Company, Greensboro, $6,225.01; American Na-

tional Bank, $8,157.00; Merchants National Bank $3,000.00. The National Bank $2,549.96, Cash $4,574.69, Merchants National Bank, Raleigh, $379.75, aggregating $16,810.98.

The dealings between the Lumber Bridge Bank and the Atlantic Banking and Trust Company between December 14th and December 18th, did not materially change the state of its accounts, nor does it appear that the available assets of the Lumber Bridge Bank were (25) reduced prior to December 24th, 1920.

The question is presented what, upon this state of the case, was the measure or standard of duty owed by the defendant, Federal Reserve Bank of Richmond, to the plaintiffs, owners of the check, in respect to the receipt from the Lumber Bridge Bank of its check on the Greensboro Bank.

The authorities appear to be practically uniform in holding that, in the absence of any instruction or permission from the owner of the check, or any custom brought to the notice of such owner to the contrary the bank had no authority to accept or receive in payment of the check entrusted to it for collection anything other than money.

Among many other decided cases the following are cited as sustaining this proposition:

In *Ward* vs. *Smith*, 74 U. S. 447, Justice Field says:

"When the instrument is lodged with the bank for collection, the bank becomes the agent of the payee or obligee to receive payment. The agency extends no further and without special authority an agent can only receive payment of the debt due his principal in the legal currency of the country or in bills which pass as money at their par value, by the common consent of the community." *Midland National Bank* vs. *Brightwell*, 148 Mo. 358; 71 Am. St. Rep. 608. In *Fifth National Bank* vs. *Ashworth*, 123 Penn. 212; 2 L. R. A. 402, Paxson, J., says:

"It is safe to say, as a general rule, that when a bank receives a check from one of its depositors for collection, it must return him the check or the money. It is

also equally clear that if the collecting bank surrenders the check to the bank upon which it is drawn, and accepts the cashier's check or other obligation, in lieu thereof, its liability to its deposition is fixed—as much so as if it had received the cash. It has no right, *unless it is specially authorized to do so*, to accept anything in lieu of money."

In that case, W. gave to A. his check on the Penn. Bank. On the same day A. endorsed the check to the Fifth National Bank, with which he was a depositor, which sent the check to the Penn. Bank and received in return therefor a cashier's check, delivering to A. his check. The cashier's check was protested for non-payment and the Penn. Bank went into liquidation. The Judge said:

(26) "The plaintiff (Ashworth) has neither his check nor his money. Watson's account with the Penn Bank was good when the account was charged up to him. I am unable to see, therefore, that the plaintiff has any remedy against either Watson or the Penn Bank."

In *National Bank* vs. *Am. Exch. Bank*, 155 Mo. 320; 74 Am. St. Rep. 527, the Court quotes with approval 2 Daniel on Negotiable Instruments (4th Ed.), Section 1625.

In the United States it is quite certain that a banker, or other agent, holding a bill or note for collection, would act at his peril in delivering up a receipt or a check for the amount; and that if the debtor did not pay the amount in money, and the drawer, or endorser, were not duly notified, they would be discharged and the loss would fall on the collecting agent . . . This seems to us the correct doctrine, for the agent exceeds authority in taking the check and, therefore, acts at his peril. And while it may be, and as a general rule undoubtedly is, the practice of creditors, in mercantile communities, to take checks in the collection of debts, and frequently to surrender other instruments on receiving them, such a practice on the part of a principal, falls far short of a usage which would permit the agent to do likewise." *Bank* vs. *Cummings*, 89 Tenn. 609; 24 Am. St. Rep. 618. "There is no evidence of any custom existing either in

Virginia or North Carolina, by which collecting banks are authorized to accept from their agents or subagents, or from the drawee-banks in settlement of collections sent them, anything other than money in settlement of such collections. Plaintiff, J. H. Malloy, testified that he was engaged in the lumber business and knew "very little about the workings of a bank—did not instruct the Perry Banking Co.—just sent the check down there for credit during the course of business."

I am of the opinion that the defendant, Federal Reserve Bank of Richmond, was not authorized to accept in payment of the proceeds of the check from the Lumber Bridge Bank, its check or draft on the Greensboro Bank and that, in doing it, was negligent, or probably to state the situation more clearly, it exceeded its authority and is liable to plaintiffs for the amount of the Balfour check, unless it may reduce the amount by showing that on the date of its acceptance, December 15, 1920, it was (27) impossible for the Lumber Bridge Bank to pay the amount in money or its equivalent.

The Lumber Bridge Bank had, on December 14th, $16,810.00 and, so far as appears, on December 24th, 1920, when it went into the hands of a Receiver, cash $4,574.00, and which, with balances in other banks aggregated about $11,000.00. It held also bills and notes to an amount not stated in the evidence.

It was not until the last named day that a Receiver was appointed. During this time, the plaintiffs were without any remedy against Balfour, whose check was paid on December 14th, or the Lumber Bridge Bank, whose check was held, and is now held, for the proceeds of the Balfour check by defendant Bank.

I am of the opinion that, upon the undisputed facts, the defendant, Reserve Bank of Richmond, is liable to the plaintiffs for the amount of the Balfour check.

Judgment will be signed that defendant Balfour is not liable as maker or drawer of the check, and that plaintiffs recover of defendant, Federal Reserve Bank of Richmond, Nine Thousand Dollars, with interest from December 14, 1920, and the cost to be taxed by the Clerk.

H. G. CONNOR,
United States District Judge.

July 8th, 1922.

JUDGMENT.

(28) Filed March 9, 1923.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA.

D. J. Malloy and J. H. Malloy, Trading as Malloy Brothers,
vs.
Federal Reserve Bank of Richmond and Napier H. G. Balfour.

No. 923.
Judgment.

This cause coming on to be heard, and being tried before His Honor, H. G. Connor, Judge, the parties having waived trial by jury and submitted the case to the Court to find the facts and render judgment thereon, and after hearing the evidence and arguments, the Court found the facts as set forth in its opinion, dated July 8th, 1922.

It is Now, on motion of J. Bayard Clark, Esquire, Attorney for the defendant, Balfour, Considered, Adjudged and Ordered that the defendant, Napier H. G. Balfour is not liable as maker or drawer of the $9,000.00 check mentioned in the pleadings, and that he go hence without day.

Upon motion of Messrs. Sinclair & Dye and Branch & Snow, Attorneys for plaintiffs, It is Considered, Adjudged and Ordered that the Plaintiffs, D. J. Malloy and J. H. Malloy, trading as Malloy Brothers, do have and recover of the defendant, Federal Reserve Bank of Richmond, the sum of Nine Thousand Dollars ($9,000), with interest thereon from December 14, 1920, until paid, and the costs of this action to be taxed by the Clerk.

Done at Raleigh, North Carolina, this 1st day of December, 1922.

H. G. CONNOR,
United States District Judge.

BILL OF EXCEPTIONS NO. 1.

(29) Filed March 9, 1923.

Be it remembered that upon the trial of this case plaintiffs, to maintain the issue on their part, introduced the following evidence:

Plaintiffs offered in evidence the fourth paragraph of the further defense contained in the Answer of the Federal Reserve Bank of Richmond, which is as follows:

"This defendant says that the check for $9,000.00 was received by this defendant from the Citizens & Southern Bank, Atlanta, Ga., in a certain letter dated December 8th and received by this defendant on December 10th, and that upon December 10th this defendant enclosed the said check for $9,000.00 so received, along with other checks, and sent the same to the Bank of Lumber Bridge in a letter dated and mailed on December 10th; and this defendant says that on December 14th the Bank of Lumber Bridge sent to this defendant a draft for the sum of $9,204.90, drawn by the Bank of Lumber Bridge on the Atlantic Bank & Trust Co., in Greensboro, N. C., which draft was sent in settlement for checks contained in the letter of December 10, 1920, above referred to."

Plaintiffs also offered in evidence that part of the fifth paragraph of the further defense contained in the Answer of the Federal Reserve Bank of Richmond, which is as follows:

"This defendant says that the above mentioned draft of the Bank of Lumber Bridge for the sum of $9,204.90 was received by it on December 15, and upon that day sent to the Atlantic Bank & Trust Co., Greensboro, N. C., for payment, and that the bank upon December 17th advised this defendant that said draft for $9,204.90 was not good."

J. H. MALLOY.

Plaintiffs produced J. H. MALLOY, one of the plaintiffs, who, being duly sworn, testified as follows:

"I live in Georgia, but I was raised in North Carolina and moved from Robeson County, North Carolina, to Georgia about twenty-five years ago. I and my brother are operating a turpentine and real estate business in Georgia, near Perry, Florida."

Plaintiffs offered in evidence a check, which is as follows and endorsed as follows:

(30) 66-639

THE BANK OF LUMBER BRIDGE

Lumber Bridge, N. C., Nov. 30th, 1920 No. 7

Pay to the order of Malloy Brothers $9,000.00
Nine thousand & no/100.....DOLLARS

(N. P.)
63-131

For. . . . .

NAPIER H. G. BALFOUR

Credit our a/c Dec. 6—1920

Malloy Bros. THE ATLANTA NATIONAL BANK
Of Jacksonville, Fla.
63-2

Pay Federal Reserve Bank of Atlanta or order, prior endorsements guaranteed.

THE CITIZENS & SOUTHERN BANK,
Atlanta, Ga.

64-5 Dec. 8, 1920 64-5

Pay to the Order of Any Federal Reserve Bank or Member Bk.

FEDERAL RESERVE BANK OF ATLANTA.

Pay to the order of Any Bank, Banker or Trust Co. All Prior Endorsements Guaranteed. Dec. 3, 1920.

THE PERRY BANKING CO.

63-131 Perry, Fla. 63-131

On being shown the above mentioned check the witness testified:

DIRECT EXAMINATION.

"This is a check for $9,000.00 sent us by Mr. Balfour. It it dated November 30th. We received it on the morning of December 2nd, and mailed it on the only train with a deposit slip to the Perry Banking Company on that afternoon. On December 3rd we received a credit card for the check. We have not received the money for the check, because it was afterwards charged back to us by the bank on the 21st or 22nd of December. It was about that date that we first learned that the bank had not collected the money for the check. Mr. Scales wired us that it had not been paid and charged it back, but the check was not returned to me. I got it from Mr. Balfour, who just now handed it to me for the purpose of using it in evidence."

On Cross Examination, the witness testified:

"The check contains on its face a stamp reading "No-protest 63-131". I do not remember whether I waived protest on the check, but I did not put the stamp on it. I do not know whether the number is what is called the transit number of the Perry Banking Company or not. I know very little about the workings of a bank. I did not know that every bank was known by a certain number. I understand from Mr. Scales that the (31) Perry Banking Company sent this check to the Atlantic National Bank of Jacksonville, and that from

there it was sent to Atlanta, but I do not know of my own knowledge what happened to the check after it was deposited by us with the Perry Banking Company. I know that the words "No-protest" mean that the check should not be protested, but I did not give the Perry Banking Company any instructions about not protesting the check, but just sent them the check for credit. I have the credit slip to which I referred with me."

The witness here produces and reads the credit slip, the material portion of which reads as follows: "Checks, drafts, etc., received for collection or deposit are taken at the risk of the endorser until actual final payment is received."

"I think the name of Malloy Brothers on the check was written by our stenographer, who was acting as our agent."

"The check was given us by Mr. Balfour in part payment of a farm that he bought from us. The farm was in North Carolina, and we sold it to Mr. Balfour, taking back a deed of trust securing a note for the entire purchase price. We received no cash payment. The note was for $15,000.00, and this check for $9,000.00 was sent us as a credit on the note. Upon receipt of the check we endorsed a credit of that amount upon the note, but we still have the note in our possession and have not executed any release of the note. We have received no other payment on the note."

DIRECT EXAMINATION.

Plaintiffs introduce as a witness the defendant, NAPIER H. G. BALFOUR, who also testified as a witness in his own behalf:

"I live at Lumber Bridge, North Carolina, and have been living there for ten years. I was in the service during the World War, and before moving to Lumber Bridge I lived in Scotland. I was born in New Zealand, and I am a naturalized American citizen. This is the check which I sent Malloy Brothers. At the time I sent this check I had to my credit in the Bank of Lumber Bridge

the sum of $9,200.00. I had borrowed the money in England. I had possession of the check ever since it was cancelled by the Bank of Lumber Bridge. It was returned to me with a statement of my account after the bank closed."

The check is here offered in evidence, and it is admitted by the plaintiff and the defendant, Federal Re-
(32) serve Bank of Richmond, that the paid stamp was placed on the check on December 14th and it was on that day charged to Mr. Balfour's account.

"I had seen the check in the Bank of Lumber Bridge before it was returned to me, and it was marked paid at that time. The Bank of Lumber Bridge was closed about December 24th. It was doing business between December 14th and December 24th, and I was there during those dates."

CROSS EXAMINATION.

"I had a letter from Malloy Brothers about the 16th or 18 of December saying that the check had not been paid. I then went into the bank and inquired and they informed me that the check had been paid by a draft on Greensboro, and it was only due to the distance and the number of hands that it had to pass through that Malloy Brothers had not received the money. The officers of the Bank of Lumber Bridge did not tell me whether or not the draft on Greensboro had been paid, and I did not make any inquiry. I do not know whether the Bank of Lumber Bridge had as much as $9,000.00 in cash on hand when I called there. In their letter to me about the check Malloy Brothers merely said that they had not got the money on the check, and then I went to the bank. I did not see the check on that trip to the bank. On December 23rd I received a wire from Malloy Brothers saying that the check was not paid, and I went to the bank again and was shown the check stamped paid. Mr. Covington, the Cashier, said that remittance had been made for the check by means of a draft on Greensboro, but I was not satisfied. He asked me to remain easy that night, and said he would give me further information."

RE-DIRECT EXAMINATION.

"I did not remain very easy that night, and the next day Mr. Covington left town and went to Lumberton to try to arrange the matter, and then he 'phoned me to come down to Lumberton, and I went. There I learned that the officers of the bank did not know whether or not they could make arrangements to pay the check. They did not tell me whether or not they had sufficient money to pay the Greensboro draft, and I did not know whether or not they had sufficient money. I do not know of any way by means of which a person at Lumber Bridge could have gotten $9,000.00 from Mr. Covington."

Plaintiff here offered in evidence a page of the general ledger of the Bank of Lumber Bridge showing the daily balance which that bank carried with different correspondent banks as of December 14, 1920, and the (33a) amount of cash on hand. These amounts are as follows:

	Credit balance.
Bal. Atlantic Bank & Trust Co., Greensboro,	$6,225.01
American National Bank,	81.57
Merchants National Bank,	3,000.00
The National Bank,	2,549.96
Cash,	4,574.69
Merchants National Bank, Raleigh,	379.75
	$16,810.98

Plaintiff then rested.

EVIDENCE OF DEFENDANT, FEDERAL RESERVE BANK

The defendant offered in evidence Regulation J of the Federal Reserve Board, which regulation is as follows:

STIPULATION "J."

Regulation J
Series of 1920.
(33b) (Superseding Regulation J of 1917.)

CHECK CLEARING AND COLLECTION.

Section 16 of the Federal Reserve Act authorizes the Federal Reserve Board to require each Federal Reserve Bank to exercise the function of a clearing house for its member banks, and section 13 of the Federal Reserve Act, as amended by the act approved June 21, 1917, authorizes each Federal Reserve Bank to receive from any nonmember bank or trust company, solely for the purposes of exchange or of collection, deposits of current funds in lawful money, national-bank notes, Federal Reserve notes, checks, and drafts payable upon presentation, or maturing notes and bills, provided such nonmember bank or trust company maintains with its Federal Reserve Bank a balance sufficient to offset the items in transit held for its account by the Federal Reserve Bank.

In pursuance of the authority vested in it under these provisions of law, the Federal Reserve Board, desiring to afford both to the public and to the various banks of the country a direct, expeditious, and economical system of check collection and settlement of balances, has arranged to have each Federal Reserve Bank exercise the functions of a clearing house for such of its member banks as desire to avail themselves of its privileges and for such nonmember State banks and trust companies as may maintain with the Federal Reserve Bank balances sufficient to qualify them under the provisions of section 13 to send items to Federal Reserve Banks for purposes of exchange or of collection. Such nonmember State banks and trust companies will hereinafter be referred to in this regulation as nonmember clearing banks.

Each Federal Reserve Bank shall exercise the functions of a clearing house under the following general terms and conditions:

(1) Each Federal Reserve Bank will receive at par from its member banks and from nonmember clearing banks in its district check [1] drawn on all member and nonmember clearing banks and on all other nonmember banks which agree to remit at par through the Federal Reserve Bank of their district.

(2) Each Federal Reserve Bank will receive at par from other Federal Reserve Banks, and from all member and nonmember clearing banks, regardless of their location, for the credit of their accounts with their respective Federal Reserve Banks, checks drawn upon all member and nonmember clearing banks of its district and upon all other nonmember banks of its district whose checks are collected at par by the Federal Reserve Bank.

(3) Immediate credit entry upon receipt subject to final payment will be made for all such items upon the books of the Federal Reserve Bank at full face value, but the proceeds will not be counted as part of the minimum reserve nor become available to meet checks drawn until such time as may be specified in the appropriate time schedule referred to in subdivision 7.

(4) Checks received by a Federal Reserve Bank on its member or nonmember clearing banks will be forwarded direct to such banks and will not be charged to their accounts until sufficient time has elapsed within which to receive advice of payment, as shown by the appropriate time schedule referred to in subdivision 7.

(33c) (5) Under this plan each Federal Reserve Bank will receive at par from its member and nonmember clearing banks checks on all member and nonmember clearing banks and on all other nonmember banks whose checks can be collected at par by any Federal Reserve Bank. Member and nonmember clearing banks will be

[1] A check is generally defined as a draft or order upon a bank or banking house, purporting to be drawn upon a deposit of funds, for the payment at all events of a certain sum of money to a certain person therein named, or to him or his order, or to bearer, and payable instantly on demand.

required by the Federal Reserve Board to provide funds to cover at par all checks received from or for the account of their Federal Reserve Banks: *Provided, however*, That a member or nonmember clearing bank may ship currency or specie from its own vaults at the expense of its Federal Reserve Bank to cover any deficiency which may arise because of and only in the case of inability to provide items to offset checks received from or for the account of its Federal Reserve Bank.[2]

(6) Section 19 of the Federal Reserve Act provides that—

The required balance carried by a member bank with a Federal Reserve Bank may, under the regulations and subject to such penalties as may be prescribed by the Federal Reserve Board, be checked against and withdrawn by such member bank for the purpose of meeting existing liabilities: *Provided, however*, That no blank shall at any time make new loans or shall pay any dividends unless and until the total balance required by law is fully restored.

Items can not be counted as part of the minimum reserve balance to be carried by a member bank with its Federal Reserve Bank until such time as may be specified in the appropriate time schedule referred to in subdivision 7. Therefore, should a member bank draw against items before such time, the draft would be charged against its reserve balance if such balance were sufficient in amount to pay it; but any resulting impairment of reserve balances would be subject to all the penalties provided by the Act.

Inasmuch as it is essential that the law in respect to the maintenance by member banks of the required minimum reserve balance shall be strictly complied with,

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[2] In accordance with instructions issued by the Federal Reserve Board on April 24, 1917, the various Federal Reserve Banks have issued circulars setting forth the conditions under which their respective member banks may draw drafts on their Reserve Bank accounts payable with or through any other Federal Reserve Bank.

the Federal Reserve Board, under authority vested in it by section 19 of the Act, has prescribed as the basic penalty for any deficiency in reserves a sum equivalent to an interest charge on the amount of the deficiency of 2 per cent per annum above the ninety-day discount rate of the Federal Reserve Bank of the district in which the member bank is located, and has announced that it will prescribe for any Federal Reserve district, upon the application of the Federal Reserve Bank of that district, as an additional progressive penalty for any subsequent deficiency by the same member bank during the same calendar year a sum equivalent to an interest charge on the amount of the subsequent deficiency at a rate increasing one-half of 1 per cent for each such subsequent deficiency.

(7) Each Federal Reserve Bank will determine by analysis the amounts of uncollected funds appearing on its books to the credit of each member bank. Such analysis will show the true status of the reserve held by the Federal Reserve Bank for each member bank and will enable it to apply the penalty for impairment of reserve. Each Federal Reserve Bank will publish time schedules showing the time at which any item to it will be counted as reserve and become available to meet any checks drawn.

(8) In handling items for member and nonmember clearing banks, a Federal Reserve Bank will act as agent only. The Board will require that each member and nonmember clearing bank authorize its Federal Reserve Bank to send checks for collections to banks on which checks are drawn, and except for negligence, such Federal Reserve Banks will assume no liability. Any further requirements that the Board may deem necessary will be set forth by the Federal Reserve Banks in their letters of instruction to their member and nonmember clearing banks. Each Federal Reserve Bank will also promulgate rules and regulations governing the details of its operations as a clearing house, such rules and regulations to be binding upon all member and nonmember banks which are clearing through the Federal Reserve Bank.

(34) The defendant Federal Reserve Bank also offered in evidence Regulation H of the Federal Reserve Board, governing the membership of State banks and trust companies in the Federal Reserve System. So much of said regulation as is relevant to this case is as follows:

"V. POWERS AND RESTRICTIONS.

Every State bank or trust company while a member of the Federal Reserve System—

1. Shall retain its full charter and statutory rights as a State bank or trust company, subject to the provisions of the Federal Reserve Act and to the regulations of the Federal Reserve Board, including any conditions embodied in the certificate of approval.

2. Shall maintain such improvements and changes in its banking practice as may have been specifically required of it by the Federal Reserve Board as a condition of its admission and shall not lower the standard of banking then required of it; and

3. Shall enjoy all the privileges and observe all those requirements of the Federal Reserve Act and of the regulations of the Federal Reserve Board made in conformity therewith which are applicable to State banks and trust companies which have become member banks."

The defendant Federal Reserve Bank also offered and read in evidence Sections 35 and 36 of Article 19 of the Georgia Laws for 1919, as follows:

Sec. 35. Due Diligence on Part of Bank in Collecting.—When a check, draft, note or other negotiable instrument is deposited in a bank for credit, or for collection, it shall be considered due diligence on the part of the bank in the collection of such check, draft, note or other negotiable instrument so deposited, to forward and route the same without delay in the usual commercial way, according to the regular course of business of banks, and the maker, indorser, guarantor, or surety of any check, draft, note or other negotiable instrument so deposited shall be liable to the bank until actual final

payment is received; and when a bank receives for collection any check, draft, note or other negotiable instrument and forwards same for collection as herein provided, it shall be liable only after actual final payment is received by it, except in case of want of due diligence on its part as aforesaid.

Sec. 36. Forwarding Check Direct to Payer.—Any bank, or banker, doing business in this State, receiving for collection or deposit, any check, note or other negotiable instrument drawn upon or payable at any other bank, located in another city or town, whether within or without this State, may forward such instrument for collection directly to the bank on which it is drawn or at which it is made payable, and such method of forwarding direct to the payor shall be deemed due diligence, and the failure of such payor bank, because of its insolvency or other default, to account for the proceeds thereof, shall not render the forwarding bank liable therefor; provided, however, such forwarding bank shall have used due diligence in other respects in connection with the collection of such instrument."

The Defendant Federal Reserve Bank of Richmond read in evidence, over the objection of the plaintiff, the depositions of J. E. Wallace and M. W. Bell, taken after due notice before Harvey L. Parry, a notary public, (on Feb. 27, 1922), at 423 Healey Building, in the City of Atlanta, Ga. The testimony of the said depositions being as follows:

(35) **TESTIMONY OF J. A. WALLACE.**

DIRECT EXAMINATION.

"My name is J. E. Wallace. I am Assistant Cashier of the Citizens & Southern Bank of Atlanta, and have been such since January, 1920. I have general charge of the Transit and Accounting Departments, through which department checks sent us for credit pass. I know that the check drawn for $9,000.00 by Napier H. G. Balfour on the Bank of Lumber Bridge w[illegible] received by the Citizens & Southern Bank of Atlanta and credited to the account of the Atlantic National Bank of Jacksonville.

The Atlantic National Bank of Jacksonville was one of our regular correspondents and has been doing business with us, I think, from about the latter part of 1919. When we got the check referred to we sent it to the Federal Reserve Bank of Richmond for the credit of the Federal Reserve Bank of Atlanta, for our account. That is the arrangement we have with them. We call it direct sending. We advised the Atlantic National Bank that we had received this check upon our standard form of advice, which we use in case of all cash letters. This form of advice is as follows:

Form 32 40M-10-19.

ADVICE OF CREDIT.

Your Date	Your Number	Description	Exchange Amount	Total

Your account has credit as above.

Drafts and checks on a bank in town having no other bank may, in the absence of special instructions from the Depositor or Correspondent, be sent to such bank for collection. If the proceeds in cash or drafts, or checks on other banks, or other cash item, do not reach this bank, the credit given for them will be cancelled. The Bank receives drafts, cash items and checks on other Banks, as a forwarder for collection only without liability for sub-agents, upon the above conditions, to which the Depositor or Correspondent hereby agrees.

THE CITIZENS AND SOUTHERN BANK,
ATLANTA, GA.

ALL FOREIGN ITEMS CREDITED SUBJECT TO ULTIMATE PAYMENT.

"We have been using this form of advice for some time in dealing with the Atlantic National Bank.

On December 21st we received a wire from the Federal Reserve Bank of Richmond about the check for $9,000.00, which wire is as follows:

(36) December 21, 1920.

"Citizens & Southern Bank,
Atlanta, Ga.

Check nine thousand dollars on sixty six dash six thirty-nine your cash letter dated December eighth total seventy four thousand seven seventy three eleven unpaid. We charge your account see mail advice.

FEDERAL RESERVE BANK OF RICHMOND."

Paid
5:30 P. M.

We later received the following letter dated December 21st

FEDERAL RESERVE BANK OF RICHMOND,

RICHMOND, VA.

Accounting Department.

Dec. 21-20.

Citizens & Southern Bank,
Atlanta, Ga.

The items listed below were forwarded in due course to the drawee bank for payment, which sent us an exchange draft, which was dishonored upon presentation. We are making every effort to obtain prompt settlement, but, as in accordance with our collection contract, all items are credited subject to final payment in cash, we will be compelled to charge these items to your account, if payment for the draft held by us is not received.

Drawee	Date and total of your letter		Amount.
66-639	Dec. 8-20	$74,773.11	$9,000.00

In the latter part of December or first of January we had some correspondence, but no further advice, except that the Bank of Lumber Bridge was closed.

I believe we have received written permission from the Federal Reserve Bank of Atlanta to send checks directly to the Federal Reserve Bank of Richmond, but I cannot find the letter granting this permission. I have not looked very diligently for the letter. We have been exercising the privilege of direct sending for some time. I have looked in our files which we have in our new building, but I have not looked through the old files back of 1919. The old files are not very accessible, but not absolutely inaccessible. We have been sending cash letters and a great part of the items for collection directly to the Federal Reserve Bank of Richmond for the credit of the Federal Reserve Bank of Atlanta for our account for some time. When we send a check directly to the Federal Reserve Bank of Richmond, it is handled just as if we had sent it to the Federal Reserve Bank of Atlanta, and they had sent it to the Federal Reserve Bank of Richmond."

(37) The witness was here shown Circular G-133, issued by the Federal Reserve Bank of Atlanta, and dated March 19, 1920. So much of this circular as is relevant to the issues of this case reads as follows:

"DIRECT ROUTING:

Under certain conditions, member banks having a large volume of cash items payable in other Federal Reserve districts, may be permitted to route such items direct to the Federal Reserve Bank or branch serving the district where payable. Application for such privilege must be made by the parent bank, Atlanta, or the New Orleans Branch if you are located in the New Orleans zone."

"GENERAL:

In handling items for member banks, the Federal

Reserve Bank of Atlanta acts as agent only. It is understood that each member bank authorizes it to send checks for collection direct to banks on which checks are drawn, and except for negligence the Federal Reserve Bank of Atlanta assumes no liability until funds are actually in its hands, and is authorized to charge back any item for which it has not received final payment, including items lost in transit.

Referring to the said circular the witness states:

"I think our bank received a copy of that circular from the Federal Reserve Bank of Atlanta, but I don't think I ever signed the agreement on the circular, and I cannot state positively that we received the circular, but I know it is the circular sent by the Federal Reserve Bank of Atlanta to banks availing themselves of the collection facilities. I would not say I was familiar with the terms of the circular, but I know in a general way the terms of handling items by the Federal Reserve Bank.

Our bank is a branch of the Citizens & Southern Bank of Atlanta, Ga.

CROSS EXAMINATION.

"If I ever received any permission to send items directly to the Federal Reserve Bank of Richmond, I think that permission would have been in writing, and I have no definite recollection as to whether or not such permission was ever received, but I think we must have had it or else we would not have sent the items directly. I cannot recall the document itself, if I ever saw it. Our bank is now in temporary quarters, and the old building is being renovated. I have not made a diligent search for the letter giving us permission to send directly. If any such permission was given in writing, it is my opinion that it is in the vault of the old building, and I have not searched there.

When we advised the Federal Reserve Bank of Atlanta that we had sent to Richmond a letter containing the check of Balfour, we did not describe the items in the (38) letter, but merely gave the total amount. The Federal Reserve Bank of Richmond deducted no charges for collecting our items, but credited the whole amount

to the Federal Reserve Bank of Atlanta, for our account on a deferred schedule, that is to say we did not receive actual credit until a sufficient time had elapsed until the items should have been paid, which should have been about five days after the letter left Atlanta. If the item was not actually collected it was to be charged back to our account as unpaid. The form of advice of credit, which I stated was sent to the Atlantic National Bank of Jacksonville by us, was in general use by us at that time for all of our cash letters. I have no definite recollection of the advice sent on the particular occasion; but it was our custom to always use this form for cash letters. The original advice sent out in this particular case is or should be in the hands of the Atlantic National Bank of Jacksonville. It is not in our possession. The first thing we heard about the letter containing the check for $9,000.00 was the telegram, to which I referred. We had received no other advice, except a general acknowledgment of our letter. Our cash letter to the Federal Reserve Bank of Richmond was dated Dec. 8th. We heard nothing concerning the check for $9,000.00, except a general advice of credit covering the letter containing it, until December 21st. It seemed rather a long time to us for them to report an item of this kind, and I so complained to the defendant bank.

I have no independent recollection of having received No. G-133."

RE-DIRECT EXAMINATION.

"I feel sure that we had permission from the Federal Reserve Bank of Atlanta to send these cash letters, about which I have testified, directly to the Federal Reserve Bank of Richmond, or else it would not have received them from us, and I feel sure that we would not have sent them without permission."

RE-CROSS EXAMINATION.

"So far as I know up to that time there was no written agreement between the Federal Reserve Bank of Atlanta and the Citizens & Southern Bank of Atlanta by which the Citizens & Southern Bank of Atlanta agreed in sending items direct to the Federal Reserve Bank of

Richmond to be bound by any contract or agreement with reference to such items as between the Federal Reserve Bank of Atlanta and the Federal Reserve Bank of Richmond."

(39) M. W. BELL, a witness for the defendant, being duly sworn, deposes and says as follows:

"My name is M. W. Bell. I am Cashier of the Federal Reserve Bank of Atlanta, and have been such since December, 1918. Circular G-133 was prepared for the purpose of affording information to all member banks as to the sysctem or method used by the Federal Reserve Bank of Atlanta in collecting checks drawn on banks in our district and in other districts, and states the terms and conditions upon which we would accept checks for collection. So far as our records show, it was sent to all member banks. I supervised the preparation of that circular. The circulars were sent out by the Transit Department of the Federal Reserve Bank of Atlanta. In my capacity as Cashier, I have general supervision of that department. According to the best of my knowledge, it was sent to all member banks. I have looked through our files, but I find no acknowledgment of its receipt by the Citizens & Southern Bank of Atlanta, but we received an acknowledgment from the Citizens & Southern Bank of Savannah, signed by W. B. Spann, Jr., who is Assistant Cashier. The acknowledgment is not dated, but it is identified with the circular by the terms of acknowledgment itself, and was received in the regular course of mail. This acknowledgment with the Citizens & Southern Bank of Savannah is as follows:

Federal Reserve Bank of Atlanta,

Atlanta, Ga.

Gentlemen:

Receipt is acknowledged of your Circular No. G-133, and the terms and conditions set forth therein are hereby agreed to.

Yours very truly,

CITIZENS & SOUTHERN BANK.

Name of Bank
Savannah, Ga.

City
Attached to letter dated

Date
March 20, 1920.

By W. B. SPANN, JR., Cashier.
Duly authorized officer showing title.

"We also received in the regular course of mail a letter from the Citizens & Southern Bank of Savannah, dated March 23, 1920, asking for several copies of the letter." The letter is as follows:

"CITIZENS & SOUTHERN BANK.

(40) Member National Reserve System.

SAVANNAH, GA.

March 23, 1920.

Mr. W. R. Patterson, Asst. Cashier,
Federal Reserve Bank,
Atlanta, Ga.

Dear Sir:

We would appreciate you sending us several copies of your Circular G-133 so that we can leave one with our Transit Department, and other departments requiring information contained in this circular.

Yours very truly,

W. B. SPANN, JR.,
Asst. Cashier.

S.

We furnished copies of the circular, mailing them to Savannah.

"The Citizens & Southern Bank of Atlanta is a branch of the Citizens & Southern Bank of Savannah. When items are sent directly from a member bank in

our district to a Federal Reserve Bank in another district, they are handled just as though they had been sent by a member bank to its own Federal Reserve Bank, and by that bank sent to the other Federal Reserve Bank, and they are sent merely for the purpose of saving double handling and time. The member bank usually gets credit immediately on the day that the Federal Reserve Bank of the district to which the items are sent affects their collections in actual cash or its equivalent, the member bank getting credit on the books of the Federal Reserve Bank of its own district, and the accounts as between the Federal Reserve Banks themselves are cleared through the gold settlement fund. The privilege of direct sending was extended to all member banks upon the same terms. There was no specific form for the permission, but the member bank was merely advised by letter that in conformity with their request they were given the privilege of direct routing. The Citizens & Southern Bank had been availing themselves of this direct sending privilege to a very large extent before the latter part of 1920. It was, in fact, their common practice. I know they had the privilege before November, 1920; our records indicate that it was extended to them before August, 1919, presumably by letter. I have searched in our files for the letter and cannot find it, though I believe there is a copy in our files."

(41) CROSS EXAMINATION.

"I have no personal knowledge of the sending of Circular G-133. I only know that I gave directions that it be sent to all member banks, and my conclusion that it was so sent was based on my confidence and the fidelity of our employees. We have the written acknowledgment of the Citizens & Southern Bank of Savannah, and also the letter from W. B. Spann, Jr., Assistant Cashier, requesting that several additional copies of the circular be sent them. The copies of the circular were mailed to Savannah.

The Citizens & Southern Bank is a corporation chartered under the laws of Georgia, and has branches in Macon, Augusta and Atlanta. Originally its home office was in Savannah. The Citizens & Southern Bank was originally the Third National Bank of Atlanta, but the

Citizens & Southern Bank bought out the Third National Bank of Atlanta. The particular bank located in Atlanta has officers and directors of its own, who control its affairs.

If the Citizens & Southern Bank did not receive a copy of the circular it was an oversight. We deal with this bank as though it was a separate entity. We deal direct with the Citizens & Southern Bank of Atlanta, and directly with the Citizens & Southern Bank at Savannah, and, when a member bank of this Federal Reserve District dealt directly with the Federal Reserve Bank of Richmond for collection of cash items, that it was customary at that time for the member bank in this district to send the Federal Reserve Bank at Atlanta a copy of the cash letter; and that the advice of the Federal Reserve Bank of Atlanta received was of the general character showing whether the items were drawn on banks situated in Richmond or drawn upon banks in that district outside of Richmond. When items are sent by one of our member banks to a Federal Reserve Bank in another district, we do not wait for an advice from that other Federal Reserve Bank. We give credit to our member bank upon the day upon which the money should be available. In this case the money should have been available in four days after they left Atlanta, and we would credit the member bank and advise them. We gave them no other advice. If for any reason one of the items in the letter was not paid it would be customary for the Federal Reserve Bank of Richmond to notify the member bank directly, and also to advise us that the item was unpaid and charge the unpaid item back to us. It is necessary for us to be advised of that fact at least. I do not know whether we received any such advice in this case—I have not looked it up. In this case the corre-
(42) spondence concerning the check of Napier H. G. Balfour, so far as I know, has been carried on by the Federal Reserve Bank of Richmond and the Citizens & Southern Bank of Atlanta. I have no record of having received any advice from the Federal Reserve Bank of Richmond of its failure to collect the $9,000.00 check made by Napier H. G. Balfour to Malloy Bros. on the Bank of Lumber Bridge. I presume our records show it, but personally I have not looked it up.

"Circular G-133 was in force in December, 1920. When I stated above that items sent to the Federal Reserve Bank of Richmond would be available within four days after leaving Atlanta, I did not mean that they would necessarily be paid within that time, but the Federal Reserve Bank of Richmond gives credit for them within four days after leaving Atlanta, as that is the time ordinarily required to present the checks to banks upon which they are drawn. Some times it will take longer, especially if they receive in payment a check or draft drawn upon some other bank. We adopted four days as a uniform time for all Virginia points. Experience with the Federal Reserve Bank of Richmond was that it usually collected is some form for checks drawn on banks in its district withing three or four days after the checks were sent from Atlanta. By collected I mean that banks on which checks were drawn would have made remittance to the Federal Reserve Bank of Richmond in cash or exchange or something else acceptable to the Federal Reserve Bank of Richmond. If remittance was received in form of an exchange draft drawn on some other bank, it would increase the actual time for collection."

Further the witness deposed not.

The defendant, Federal Reserve Bank of Richmond, then produced and read in evidence the depositions of Edward Waller, Jr., T. A. Ratcliffe, J. Hammond Siler, L. A. Wingo, and J. Cabell Brockenbrough, taken after due notice before C. V. Blackburn, a notary public, at the office of the Federal Reserve Bank of Richmond, at Ninth & Franklin Street, in the City of Richmond, Virginia, which depositions were as follows:

DIRECT EXAMINATION.

T. A. RATCLIFFE, a witness of lawful age, being duly sworn, deposes as follows:

"My name is T. A. Ratcliffe, and I am twenty-five years of age. I am a bookkepper of the Federal Re-

serve Bank, having charge of the non-member ledgers."

(43) The witness was here shown a sheet taken from the ledgers of the Federal Reserve Bank of Richmond.

"The sheet which you show me was taken from one of the ledgers of the Federal Reserve Bank kept by me and shows the account between the Bank of Lumber Bridge and the Federal Reserve Bank. The Bank of Lumber Bridge was not a member of the Federal Reserve System, but in December, 1920, the Federal Reserve Bank of Richmond was accepting checks for collection drawn on the Bank of Lumber Bridge, and on the tenth day of December, 1920, we sent to the Bank of Lumber Bridge a cash letter containing checks aggregating $9,356.44. According to the time schedule we should have received a remittance for this letter on the 14th day of December. In this case we receivd a draft in settlements for the above mentioned letter on the 15th day of December. The amount of the draft was $9,204.90, the difference being occasioned by certain items in the letter which were returned to us unpaid."

CROSS EXAMINATION.

"I think a letter mailed in Richmond to the Bank of Lumber Bridge should reach Lumber Bridge on the next day, and it would take the same time for its return."

J. HAMMOND SILER, JR., a witness of lawful age, was called by the defendant, Federal Reserve Bank, and deposed as follows:

"My name is J. Hammond Siler, Jr., I am twenty-two years old. I am a Clerk for the Federal Reserve Bank of Richmond, and was employed in the Transit Department on or about December 14, 1920. It was my duty to attend to remittance drafts received from non-member banks if they were not paid when presented by us."

The following telegrams or carbon copies of telegrams were here shown to the witness:

Siler #1.

179NSED 23 COLLECT
GREENSBORO NC 728 P DEC 17 1920

FEDERAL RESERVE BANK
RICHMOND VA.

CHECK ON US BY BANK OF LUMBER BRIDGE NINETY TWO HUNDRED FOUR DOLLARS NINETY CENTS YOURS FIFTEENTH PROTESTED AND RETURNED NOT SUFFICIENT FUNDS.

ATLANTIC BANK AND TRUST CO. 734 P

Siler #2.

BANK OF LUMBER BRIDGE
(44) LUMBER BRIDGE NC

ATLANTIC BANK GREENSBORO ADVISES YOUR DRAFT NINETY TWO HUNDRED FOUR NINETY OUR ORDER NOT GOOD NOW. HAVE FUNDS WIRED GREENSBORO AT ONCE AND ADVISE US BY WIRE THAT YOU HAVE DONE SO. RUSH REPLY.

FEDERAL RESERVE BANK OF RICHMOND.
Paid—2:49
JHS

Siler #3.

96 MSN 29 COLLECT
GREENSBORO NC 122 P DEC 17 1920

FEDERAL RESERVE BANK
RICHMOND VA.

CHECK ON US BY BANK OF LUMBER BRIDGE NINETY TWO HUNDRED FOUR DOLLARS NINETY CENTS YOURS FIFTEENTH NOT GOOD NOW

SAYS WILL MAKE GOOD THIS AFTERNOON WE WILL ADVISE.

ATLANTIC BANK AND TRUST CO. 130 P

Siler #4.

A594D 5

LUMBER BRIDGE NC 435 P 17

FEDERAL RESERVE BANK OF RICHMOND
RICHMOND VA

YOUR WIRE MATTER BEING ADJUSTED.

BANK OF LUMBER BRIDGE.

"I caused to be sent such of the above mentioned telegrams as were signed by the Federal Reserve Bank, and received those which were addressed to it. To the best of my recollection the draft given by the Bank of Lumber Bridge on the Atlantic Bank & Trust Company in Greensboro was never paid by the Atlantic Bank & Trust Company in Greensboro."

DIRECT EXAMINATION.

L. A. WINGO, a witness of lawful age, produced by the Defendant Federal Reserve Bank of Richmond, being duly sworn, deposes as follows:

"My name is L. A. Wingo. I am twenty-six years of age. I was Manager of the Accounting Department of the Federal Reserve Bank of Richmond in December, 1920, and it was my duty to notify banks and others persons interested of the non-payment of the remittance drafts received in payment for cash letters sent by us (45) to non-member banks. Cash letters are letters containing checks which were received from correspondents, that is to say, from member banks throughout the system, and which checks are assembled in letters addressed to the bank upon which they are drawn and sent to it under one total."

The witness is here shown a list of checks contained in the letter of the Federal Reserve Bank of Richmond dated December 10th to the Bank of Lumber Bridge.

"It appears from the above mentioned sheets that in the letter sent by the Federal Reserve Bank of Richmond to the Bank of Lumber Bridge on December 10th there was contained a check for $9,000.00. This check was drawn upon the Bank of Lumber Bridge, and was received from the Citizens & Southern Bank of Atlanta. Our records do not show the name of the drawer, payee, or any endorser, except the Citizens & Southern Bank. When the draft which the Federal Reserve Bank of Richmond received from the Bank of Lumber Bridge in payment for its letter of December was dishonored, after presentation to the Atlantic Bank & Trust Co., Greensboro, I notified the banks whose items were in our letter of December 10th, and in particular I sent to the Citizens & Southern Bank of Atlanta the following telegram:

L. A. Wingo #2.

Dec. 21, 1920.

CITIZENS & SOUTHERN BANK,
ATLANTA, GA.

CHECK NINE THOUSAND DOLLARS ON SIXTY SIX DASH SIX THIRTY NINE YOUR CASH LETTER DATED DECEMBER EIGHTH TOTAL SEVENTY FOUR THOUSAND SEVEN SEVENTY THREE ELEVEN UNPAID. WE CHARGE YOUR ACCOUNT. SEE MAIL ADVICE.

FEDERAL RESERVE BANK OF RICHMOND.

PAID
5:30 P. M.

I also sent by mail a confirmation of this telegram, and sent a telegram to the Federal Reserve Bank of Atlanta."

Cross Examination.

"The above mentioned telegram was sent on December 21st. After sending the telegram, by error we sent to the Citizens & Southern Bank a notice on a lost item from stating that the check for $9,000.00 on the Bank of Lumber Bridge had been lost in the mails, which notice was sent on December 24th.

Direct Examination.

(46) J. Cabell Brockenbrough, a witness of lawful age, produced by the defendant, Federal Reserve Bank of Richmond, being duly sworn, deposes as follows

"My name is J. Cabell Brockenbrough. I am twenty-four years of age. I am a clerk employed in the Adjustment and Transfer Department of the Federal Reserve Bank of Richmond. After Mr. Wingo had dictated and sent the telegram dated December 21, 1920, to the Citizens & Southern Bank, I prepared slips for those items so that they could be charged back. By error, I used the form which we generally use when a check has been lost in the mails. The items were charged back on the 24th on lost item forms. One of these slips was sent to the Citizens & Southern Bank on December 24th, and afterwards the mistake was found out and a special letter was mailed to them. I do not know just when this special letter was mailed."

Counsel for defendant, Federal Reserve Bank, admits that this letter was mailed after December 24th.

Direct Examination.

Edward Waller, Jr., a witness of lawful age, produced by the defendant, Federal Reserve Bank of Richmond, being duly sworn, deposes as follows:

"My name is Edward Waller, Jr. I am thirty-one years of age, and am Assistant Cashier of the Federal Reserve Bank of Richmond, having general supervision

of the Transit, Bookkeeping, and Adjustment & Transfer Departments. I held this position on December 24, 1920. I received the following letter dated January 17th:

"THE CITIZENS AND SOUTHERN BANK
Atlanta, Ga.

January 17, 1921.

Ed. Waller, Jr., #1.

Mr. Edw. Waller, Jr., Assistant Cashier,
Federal Reserve Bank of Richmond,
Richmond, Va.

Dear Sir:—

We have your letter of December 30th regarding item of $9,000.00 on the Bank of Lumber Bridge, N. C. which we forwarded you in our letter of December 8th.

We notice that you state on December 17th your correspondent in Greensboro telegraphed you non-payment (47) of this remittance draft on the Bank of Lumber Bridge, however, you did not advise us that this item was unpaid until December 21st—four days later.

It appears to us that you should have wired us December 17th in order to give our endorser an opportunity to protect himself against paying out funds on this item, and we would appreciate an explanation regarding this so that we may pass it to our endorser.

Very truly yours,

(Signed) JNO. E. WALLACE,
JEW:W Assistant Cashier."

and sent the following reply:

"January 20, 1921.

Ed. Waller, Jr., #2.

Mr. Jno. E. Wallace, Assistant Cashier,
Citizens & Southern Bank,
Atlanta, Ga.

Dear Sir:

I have for acknowledgment your letter of January 17th, with further reference to item $9,000.00 on the Bank of Lumber Bridge, Lumber Bridge, N. C.

We must say that we disagree with you in that we should have telegraphed you on December 17th, advising non-payment of the remittance draft drawn on Greensboro, which included payment of the $9,000.00 item referred to by you. If it had been the item itself returned to us from the drawee bank, we, of course, should have wired you immediately, giving information that we had in hand, but inasmuch as it was the drawee bank's own draft on their correspondent which was unpaid, and further as we had no reason to suspect that there was anything wrong with the Bank of Lumber Bridge, we think it only fair that we should have communicated with them to see what explanation they had to offer before we attempted to advise the endorsers on the items represented by the draft in question.

I will venture to say that in ninety five per cent of the cases we have had where our non-member bank correspondent drafts are dishonored, they are later paid, and trouble of this nature is most often caused by delayed mails or an error of some kind which is immediately corrected as soon as it is brought to the drawing bank's attention.

We have a wire in our files from the Bank of Lumber Bridge received on December 18th, which was in reply to our wire to them of December 17th, stating that they had made arrangements to take care of their draft as requested in our telegram to them. In view of the circumstances surrounding this case, we do not see how you could have possibly expected advice of non-payment of your item before Monday, December 20th, and as previously explained, our only reason for not telegraphing you on that day was that we were using our every effort (48) to get in touch with the Lumber Bridge bank, but as we were unsuccessful, we began immediately looking up the endorsers on the checks represented by the remittance draft, and on Tuesday, the 21st, as you know,

we telegraphed you the non-payment of the item mentioned above.

Very truly your,

(Signed) ED. WALLER, JR.,
EW/W Assistant Cashier."

"Before the Bank of Lumber Bridge sent us the draft for $9,204.90 on Greensboro it had remitted with reasonable promptness and by means of a good draft for checks sent to it. When we sent items to Lumber Bridge, we expected to receive an answer three days after mailing the letter. We publish a time schedule showing the usual time for collection throughout our district, but we do not publish time schedules for individual banks. The Citizens & Southern Bank is a member of the Federal Reserve System.

I have been in the banking business since February, 1910. The business of check collecting is handled by the Federal Reserve Bank in a way very similar to that in which it is handled by collecting banks throughout the country. When one bank receives checks on another in a distant city, it usually sends them to the bank upon which they are drawn or to some other bank in that city, (49) and receives settlement by means of an exchange draft drawn by the bank to which the checks are sent upon some one of its correspondents. When checks are sent with the expectation that the bank receiving them will remit at once, we call it sending for collection and return. When this is done, the bank upon which the checks are drawn is expected to cancel the checks and charge them to the accounts of the drawers and to remit by means of its exchange draft or by a shipment of currency. An exchange draft is used more frequently than a shipment of currency.

Prior to December 14, 1920, we had no reason to suspect the insolvency of the Bank of Lumber Bridge. Remittance drafts given by small banks in settlement for cash letters are frequently dishonored on their first presentation and paid the following day.

The Fifth Federal Reserve District, in which the Federal Reserve Bank of Richmond is located, consists of a portion of the State of West Virginia, Virginia,

Maryland, District of Columbia, and the State of North Carolina and South Carolina. The Federal Reserve Bank of Richmond collects checks on banks throughout this district, and some times sends representatives to all parts of the district to see about collections. It has no regular office except at Richmond and Baltimore."

Further this witness deposeth not.

DIRECT EXAMINATION.

The defendant, Federal Reserve Bank, further maintains the issue joined, called as witness D. M. HALE, who, being duly sworn, testified as follows:

"I am an employee of the Federal Reserve Bank, and it is my duty to visit banks throughout this district for the purpose of making agreements with them under which they undertake to remit for checks sent them by the Federal Reserve Bank of Richmond, and also to visit them when they failed to remit promptly. Some time about the first of October, 1920, I went to Lumber Bridge and called on Mr. Covington, the Cashier of the Bank of Lumber Bridge. He said that he did not wish to sign any agreement to remit for checks at that time, but that when we undertook to collect checks on all other banks in North Carolina we could send him his checks and he would remit for them. I told him he could remit either by a draft or shipment of currency at our expense.

I again visited the Bank of Lumber Bridge on the morning of December 20th. A draft given by the Bank of Lumber Bridge had been returned unpaid by the (50) Greensboro bank, and I went to see if I could get a settlement. I saw Mr. Covington, the Cashier of the Bank of Lumber Bridge. He told me that he could not pay the draft which we held. He had in his bank some checks which we had sent him and which he had not cancelled. I got him to return these checks to me and asked him if he could pay them, and he said no. I told him that I would take them and he said all right. He said he hoped to make an arrangement to pay them the next day. The directors were having a meeting that night and he expected that if they would sign a guarantee he could borrow some money to take care of the checks. He

asked me to give him a little time. The next morning Mr. Covington met me and told me that some of his directors would not sign the guarantee, so I got a notary and had some checks on the Bank of Lumber Bridge which I had with me protested."

Counsel for Federal Reserve Bank produced a draft for $9,204.90, stating that it had been filed with the receiver of the Bank of Lumber Bridge under stipulation of counsel that such filing should be without prejudice to either party.

The witness is here shown the draft which is as follows and endorsed as follows:

ATLANTIC BANK & TRUST COMPANY 66-60

5

GREENSBORO, N. C. Dec. 14, 1920 No. 439.

Pay to the Order of Federal Reserve Bank $9,204.90
PAY $9204 AND 90 CTS.....DOLLARS

(SIGNED) G. W. COVINGTON,
Ass't Cashier.

Endorsed on face of check as follows:

Protested for non-payment
C. E. Fleming
Not. Public
Guilford Co.
Dec. 17 20.

My com.
Ex. 4 13 22

Endorsed on back of check as follows:

Pay to the Order of Any Bank, Banker or Trust Company All Prior Endorsements Guaranteed Dec. , 1920.

ATLANTIC BANK & TRUST CO.
Greensboro, N. C.

66-60 JNO. W. SIMPSON CASHIER 66-60

Pay to the Order of any Bank, Banker of Trust Company Prior Endorsements Guaranteed

68-3 Dec. 15, 1920 68-3

FEDERAL RESERVE BANK OF RICHMOND.

"My recollection is that I had this draft with me (51) when I talked to Mr. Covington and that I demanded payment of it, but that Mr. Covington told me that he had no funds. I have been in the banking business about six or seven years, and have been with the Federal Reserve Bank in its Bank Relations Department since April, 1920. It is not unusual for remittance drafts sent us by small banks to be dishonored.

There was only one bank in the town of Lumber Bridge. I could not get the check for $9,000.00 drawn by Mr. Balfour from the Bank of Lumber Bridge, because it had been cancelled and charged to Mr. Balfour's account. I suppose it had been because I had the draft for $9,204.90 covering the letter in which the $9,000.00 check had been sent. I left Lumber Bridge on the night of December 21st. When I left the Bank of Lumber Bridge was still open."

DIRECT EXAMINATION.

E. M. JOHNSON, a witness being duly sworn, deposes and testifies as follows:

"My name is E. M. Johnson. I am receiver of the Bank of Lumber Bridge. The bank was closed on the 24th, and I was appointed receiver on the 28th. When I took charge there was about $1,395.00 in cash in the vault, but about $200.00 or $300.00 of it was in checks or other irregular items carried as cash. The bank had on deposit with other banks as follows: About $3,500.00 with the National Bank of Fayetteville, and about $16.00 in one of the Richmond banks. There was some balance in the Atlantic Bank & Trust Company, Greensboro, but I don't remember the exact amount. I will produce and

file a statement showing the transactions between the Atlantic Bank & Trust Company, Greensboro, and the Bank of Lumber Bridge between December 14th and December 24th, 1920."

The statement above referred to is as follows:

Transactions with the Atlantic Bank & Trust Company, Greensboro, N. C., by the Bank of Lumber Bridge, Lumber Bridge, N. C., from December 14th to December 24th, 1920.

Debits.

December 13th, 1920		Balance,	$3,468.44
	15th, "	Cash Letter,	3,000.00
	17th, "	" "	809.90
			$7,278.34

Credits.

The following was credited to the account of the Atlantic Bank & Trust Company by the Bank of Lumber Bridge. (Other than for drafts issued.)

December 14th, 1920	Return items		$25.25
(52)	15th, "	" "	66.31
	17th, "	" "	1.30
			$92.86

Total debits.	$7,278.34
Less deductions for return items.	92.86
Balance.	$7,185.48

The following drafts were issued by the Bank of Lumber Bridge, Lumber Bridge, N. C., on the Atlantic Bank & Trust Company, Greensboro, N. C., on or after December 14th, 1920, and were paid:

Dec. 14th, 1920 #440, payable to The State Bank, Laurinburg,	$ 204.68

"	"	"	#441, payable to W. B. & T. Co., Winston-Salem,	124.75
"	"	"	#442, payable to J. H. Hightower, Cashier, Raleigh,	133.87
"	15th,	"	#443, payable to Federal Reserve Bank, Richmond,	635.32
"	16th,	"	#444, payable to Federal Reserve Bank, Richmond,	906.88
"	17th,	"	#445, payable to National Bank, Fayetteville,	2,000.00
"	23rd,	"	payable to "Cash" at 1st Nat. Bank, Lumberton,	1,000.00
"	20th,	"	payable to "Cash" at Atlantic Bk. & Tr. Co., Greensboro,	1,000.00

Total of drafts that were drawn and paid on or after Dec. 14th, 1920, $6,005.50

Draft #439, dated Dec. 14th, 1920, for $9,204.90 in favor of the Federal Reserve Bank, of Richmond, Va., was returned unpaid.

The following was credited to the account of the Atlantic Bank & Trust Company by the Bank of Lumber Bridge as a payment on the indebtedness. (Bills payable) of the same bank:

December	17th, 1920, Payement on note,	$ 680.00
"	18th, 1920, Payment on note,	353.43
	Total payments on note,	$1,033.43

Summary of credits.

Total of payments on note after Dec. 14th, 1920.	$1,033.43
Total of drafts drawn and paid on or after Dec. 14th, 1920.	6,005.50
	$7,038.93
Total debits.	$7,278.34

E. M. JOHNSON.

Credit for return items.	$ 92.86	
Credit for drafts issued and paid. .	6,005.50	
Credit for payment on note.	1,033.43	
Total.	7,131.79	
Less total credits.		$7,131.79
Balance.		$ 146.55

The above was all of the material testimony of the evidence introduced by the plaintiff and by both defendants. At the conclusion of the testimony, all parties having duly waived a jury and submitted all questions of law and fact to the court upon the stipulation that the findings of the court should have like force and effect as the jury, the plaintiff moved the court to find the facts and give judgment upon the uncontradicted evidence in its favor, and each defendant moved the court to find the facts and give judgment upon the uncontradicted evidence in its favor. The court, having duly considered the matter, found the facts and filed a statement of the facts found and the opinion of the court, which state-
(53) ment and opinion appear elsewhere in the record, and is here referred to and made a part of this bill as though it was here set forth in full. The defendant, Federal Reserve Bank, excepted to the said findings of fact and to the refusal of the court to find the facts and give judgment in its favor upon the uncontradicted evidence, whereupon the court entered judgment against the defendant, Federal Reserve Bank of Richmond, and in favor of the plaintiffs, and entered judgment in favor of the defendant, Napier H. G. Balfour, to which judgment the defendant, Federal Reserve Bank of Richmond excepted and tenders this its bill of exception, praying that the same may be signed, sealed and made a part of the record, which is accordingly done.

Given under my hand this 9th day of Dec., 1922.

H. G. CONNOR,
Judge of the United States District Court for the
Eastern District of North Carolina.

BILL OF EXCEPTIONS NO. 2.

(54) Filed Mar. 9, 1923.

Be it remembered that upon the trial of this case to maintain the issue joined, and especially to establish the custom and usages followed by Federal Reserve Banks and other banks throughout the country at large, and throughout the States of Virginia and North Carolina in particular, and to show that it was a custom to send checks directly to the banks upon which they were drawn and to accept an exchange draft from such banks in settlement for the checks so sent to it, the defendant, Federal Reserve Bank of Richmond, read in evidence the deposition of one Edward Waller, Jr., who testified as follows:

"I am thirty-one years of age, and am Assistant Cashier of the Federal Reserve Bank of Richmond, having general supervision of the Transit, Bookkeeping, and Adjustment & Transfer Departments. I held this position on December 24, 1920 . . . . .

I have been in the banking business since February, 1910. The business of check collecting is handled by the Federal Reserve Bank in a way very similar to that in which it is handled by collecting banks throughout the country. When one bank receives checks on another in a distant city, it usually sends them to the bank upon which they are drawn or to some other bank in that city, and receives settlement by means of an exchange draft drawn by the bank to which the checks are sent upon some one of its correspondents. When checks are sent with the expectation that the bank receiving them will remit at once, we call it sending for collection and return. When this is done, the bank upon which the checks are drawn is expected to cancel the checks and charge them to the accounts of the drawers and to remit by means of its exchange draft or by a shipment of currency. An exchange draft is used more frequently than a shipment of currency."

The defendant, for the purpose of proving that it had received the check mentioned in this suit for the account and credit of the Federal Reserve Bank of At-

J. E. WALLACE.

lanta, read in evidence the deposition of J. E. WALLACE, who testified that he was Assistant Cashier of the Citizens & Southern Bank of Atlanta, Ga., and, upon the subject of the previous usages and dealings between the (55) Federal Reserve Bank of Richmond and the Federal Reserve Bank of Atlanta, testified as follows:

"I am Assistant Cashier of the Citizens & Southern Bank of Atlanta, and have been such since January, 1920. I have general charge of the Transit and Accounting Departments, through which department checks sent us for credit pass. I know that the check for $9,000.00 drawn by Napier H. G. Balfour on the Bank of Lumber Bridge was received by the Citizens & Southern Bank of Atlanta and credited to the account of the Atlantic National Bank of Jacksonville. The Atlantic National Bank of Jacksonville was one of our regular correspondents and has been doing business with us I think from about the latter part of 1919. When we got the check referred to we sent it to the Federal Reserve Bank of Richmond for the credit of the Federal Reserve Bank of Atlanta, for our account. That is the arrangement we have with them. We call it direct sending." . . . .

"I believe we have received written permission from the Federal Reserve Bank of Atlanta to send checks directly to the Federal Reserve Bank of Richmond, but I cannot find the letter granting this permission. I have not looked very diligently for the letter. We have been exercising the privilege of direct sending for some time. I have looked in our files which we have in our new building, but I have not looked through the old files back of 1919. The old files are not very accessible, but not absolutely inaccessible. We have been sending cash letters and a great part of the items for collection directly to the Federal Reserve Bank of Richmond for the credit of the Federal Reserve Bank of Atlanta for our account for some time. When we send a check directly to the Federal Reserve Bank of Richmond, it is handled just as if we had sent it to the Federal Reserve Bank of Atlanta and they had sent it to the Federal Reserve Bank of Richmond." . . . .

CROSS EXAMINATION.

"If I ever received any permission to send items directly to the Federal Reserve Bank of Richmond, I think that permission would have been in writing, and I have no definite recollection as to whether or not such permission was ever received, but I think that we must have had it or else we would not have sent the items directly. I cannot recall the document itself, if I ever saw it. Our bank is now in temporary quarters and the old building is being renovated. I have not made a diligent search for the letter giving us permission to send directly. If any such permission was given in writing, it is my opinion that it is in the vault of the old building, and I have not searched there."

The defendant, Federal Reserve Bank of Richmond, likewise read in evidence the deposition of M. W. BELL, Cashier of the Federal Reserve Bank of Atlanta, who, upon the subject of the previous dealings between the Federal Reserve Bank of Atlanta and the Federal Reserve Bank of Richmond and the Citizens & Southern Bank of Atlanta, testified as follows:

(56) "When items are sent by one of our member banks to a Federal Reserve Bank in another district, we do not wait for an advice from that other Federal Reserve Bank. We give credit to our member bank upon the day upon which the money should be available. In this case the money should have been available in four days after they left Atlanta, and we would credit the member bank and advise them. We gave them no other advice. If for any reason one of the items in the letter was not paid, it would be customary for the Federal Reserve Bank of Richmond to notify the member bank directly, and also to advise us that the item was unpaid and charge the unpaid item back to us. It is necessary for us to be advised of that fact at least. I do not know whether we received any such advice in this case—I have not looked it up. In this case the correspondence concerning the check of Napier H. C. Balfour, so far as I know, has been carried on by the Federal Reserve Bank of Richmond and the Citizens & Southern Bank of Atlanta.

J. H. MALLOY.

I have no record of having received any advice from the Federal Reserve Bank of Richmond of its failure to collect the $9,000.00 check made by Napier H. G. Balfour to Malloy Bros. on the Bank of Lumber Bridge. I presume our records show it but personally I have not looked it up."

RE-DIRECT EXAMINATION.

"Circular C-133 was in force in December, 1920. When I stated above that items sent to the Federal Reserve Bank of Richmond would be available within four days after leaving Atlanta, I did not mean that they would necessarily be paid within that time, but the Federal Reserve Bank of Richmond gives credit for them within four days after leaving Atlanta, as that is the time ordinarily required to present the checks to banks upon which they are drawn. Some times it will take longer, especially if they receive in payment a check or draft drawn upon some other bank. We adopted four days as a uniform time for all Virginia points. Experience with the Federal Reserve Bank of Richmond was that it usually collected in some form for checks drawn on banks in its district within three or four days after the checks were sent from Atlanta. By collected I mean that banks on which checks were drawn would have made remittance to the Federal Reserve Bank of Richmond in cash or exchange or something else acceptable to the Federal Reserve Bank of Richmond. If remittance was received in form of an exchange draft drawn on some other bank, it would increase the actual time for collection."

The plaintiffs and the defendant, Napier H. G. Balfour, introduced no evidence in contradiction of the above testimony, but produced and examined as a witness J. H. MALLOY, one of the plaintiffs, who testified in part as follows:

"The check contains on its face a stamp reading "No-protest 63-131." I do not remember whether I waived protest on the check, but I did not put the stamp on it. I do not know whether the number is what is

called the transit number of the Perry Banking Company or not. I know very little about the workings of a bank. I did not know that every bank was known by a certain number. I understand from Mr. Scales that the Perry Banking Company sent this check to the Atlantic National Bank of Jacksonville, and that from there it was sent to Atlanta, but I do not know of my own knowledge what happened to the check after it was de-
(57) posited by us with the Perry Banking Company. I know that the words "No-protest" mean that the check should not be protested, but I did not give the Perry Banking Company any instructions about not protesting the check, but just sent them the check for credit."

There was no evidence showing or tending to show that the plaintiffs, D. J. Malloy and J. H. Malloy, or either of them, knew anything of the usuages or customs of banks in collecting checks delivered to them for collection or knew anything concerning the previous methods of dealing between the Federal Reserve Bank of Richmond and the Federal Resrve Bank of Atlanta and the Citizens & Southern Bank of Atlanta.

At the conclusion of the testimony of this case, all questions of law and fact having been submitted to the court for determination without a jury, the court having heard argument of counsel and considered the matter, filed herein a written statement of facts and its opinion thereon, which statement of facts and opinion is in part as follows:

"There is no evidence of any custom existing either in Virginia or North Carolina, by which collecting banks are authorized to accept from their agents or subagents, or from the drawee banks in settlement of collections sent them, anything other than money in settlement of such collections. Plaintiff, J. H. Malloy, testified that he was engaged in the lumber business and knew 'very little about the workings of a bank—did not instruct the Perry Banking Co.—just sent the check down there for credit during the course of business."

The defendant, Federal Reserve Bank of Richmond, duly excepted to the said findings of fact, and especially

to the above quoted portion thereof, for that the finding that there was no evidence of a custom existing either in Virginia or North Carolina, by which collecting banks are authorized to accept from their agents or sub-agents, or from the drawee bank, in settlement for collections sent them, anything other than money in settlement for such collections was contrary to the uncontradicted evidence in this case as above set forth; and also for that it is immaterial whether or not such custom was known to the plaintiffs, in that it appeared from the uncontradicted evidence that such customs were known to the Federal Reserve Bank of Atlanta and the Citizens & Southern Bank of Atlanta, Ga., from which the defendant, Federal Reserve Bank of Richmond, received this check, that the court, nevertheless, entered judgment in favor of the plaintiffs against the Federal Reserve Bank (58) of Richmond and in favor of the defendant, Napier H. C. Balfour, and the defendant, Federal Reserve Bank of Richmond, now tenders this its bill of exception and prays that the same be signed, sealed and made a part of the record.

Given under my hand this 9th day of Dec., 1922.

H. G. CONNOR,
Judge of the United States District Court for the Eastern District of North Carolina.

BILL OF EXCEPTIONS NO. 3.

(59) Filed Mar. 9, 1923.

Be it remembered that upon the trial of this case and after the court had found the facts and announced its opinion, which statement of the facts and opinion is elsewhere set forth in this record, but is here referred to and made a part of this bill of exceptions as though it were here set forth in full, the defendant, Federal Reserve Bank, objected to the entry of judgment upon the said findings of fact and opinion of the court for the reason that it appeared that upon the facts as found by the court the defendant, Federal Reserve Bank, was not

liable to the plaintiff. The court overruled the said objection and entered judgment against the defendant, Federal Reserve Bank, and in favor of the plaintiff and the defendant, Napier H. G. Balfour, to which ruling and judgment the said defendant duly excepted, and tenders this its bill of exceptions and prays that the same may be signed, sealed and made a part of the record, which is accordingly done.

Given under my hand this 9th day of Dec., 1922.

H. G. CONNOR,
Judge of the United States District Court for the Eastern District of North Carolina.

ASSIGNMENT OF ERRORS.

(60) Filed Mar. 9, 1923.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA.
AT RALEIGH.

D. J. Malloy & J. H. Malloy, Partners, trading as Malloy Brothers,
vs.
Federal Reserve Bank of Richmond and Napier H. G. Balfour.
} Assignment of Errors.

Comes now the Federal Reserve Bank of Richmond and files the following assignment of errors in which it will rely in the prosecution of a writ of error in the above entitled cause.

1. The trial court erred in refusing to find in favor of the defendant, Federal Reserve Bank of Richmond and to give judgment in its favor, for that it appeared from the uncontradicted evidence in said case that the defendant, Federal Reserve Bank of Richmond, was in no way liable to the plaintiffs.

2. The trial court erred in finding as follows:

"There is no evidence of any custom existing either in Virginia or North Carolina, by which collecting banks are authorized to accept from their agents or subagents, or from the drawee banks in settlement of collections sent them, anything other than money in settlement of such collections. Plaintiff, J. H. Malloy, testified that he was engaged in the lumber business and knew 'very little about the workings of a bank—did not instruct the Perry Banking Co.—just sent the check down there for credit during the course of business.'"

For that the uncontradicted testimony of Edward Waller, Jr., showed that such a custom existed among and was generally known to all Federal Reserve banks and commercial banks engaged in the business of collecting checks, and the uncontradicted testimony of M. W. Bell and J. E. Wallace, showing that such custom was known to the Federal Reserve Bank of Atlanta and the Citizens & Southern Bank of Atlanta, Georgia, which were acting as the agent for the plaintiff.

3. The trial court erred in entering judgment upon the facts as found, for that it appeared from said facts so found that the defendant, Federal Reserve Bank of Richmond, was in no way liable to the plaintiffs.

Wherefore, the Federal Reserve Bank of Richmond prays that the record and proceedings in the said case may be reviewed and the judgment entered therein may be reversed.

FEDERAL RESERVE BANK OF RICHMOND.

By Counsel,

M. G. WALLACE.

STIPULATION FOR MAKING UP RECORD.

(61) Filed March 9, 1923.

It is hereby stipulated and agreed that the following portions portions of the record and proofs in the above entitled case shall be printed in the transcripts of the record for use in the United States Circuit Court of Appeals for the Fourth Circuit:

1. The complaint of the plaintiffs.
2. The answer of both defendants.

3. Stipulation of counsel waiving trial by jury.

4. The statement of facts and opinion of the court.

5. The judgment of the Court.

6. Defendant, Federal Reserve Bank of Richmond, bills of exceptions.

7. Defendant, Federal Reserve Bank of Richmond, assignments of error.

8. This stipulation.

9. Memorandum of date of petition for writ of error.

10. Memorandum of date of order allowing writ of error.

11. Memorandum of date of writ of error and date when copy thereof was lodged in the office of the clerk of this district court.

12. Memorandum of the date, penalty, names of obligors, and condition of the appeal bond.

13. Memorandum of date of citation, and date of service thereof or waiver of service thereof.

(62) It is further stipulated and agreed that the clerk

of the district court shall make up a transcript of the record in the above styled cause, transmit the same to the clerk of the United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, to be printed in accordance with rule 23 of that court.

M. G. WALLACE,
Counsel for Federal Reserve Bank of Richmond.
R. H. DYE,
Counsel for D. J. Malloy & J. H. Malloy.
J. BAYARD CLARK,
Counsel for Napier H. G. Balfour.

MEMORANDUM OF SECTION 7 OF RULE 14.

(63) (1) Petition for Writ of Error, filed March 9, 1923.

(2) Order Allowing Writ of Error, March 9, 1923.

(3) Writ of Error issued March 9, 1923.

(4) Citation. Dated March 9, 1923, and service of same accepted March 12, 1923, by R. H. Dye, Attorney for D. J. Malloy and J. H. Malloy and by J. Bayard Clark, Attorney for Napier H. G. Balfour.

(5) Writ of Error Bond, dated March 13th, 1923; Penalty $250.00; Obligors Federal Reserve Bank of Richmond and National Surety Company; Conditioned for damages and costs.

ORDER TO TRANSMIT RECORD.

(64) And, thereupon, it is ordered by the Court here that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the said United States Circuit Court of Appeals for the Fourth Circuit; and the same is transmitted accordingly.

Teste:

S. A. ASHE,
Clerk U. S. District Court.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,
(65) Eastern District of North Carolina, ss:

I, S. A. Ashe, Clerk of the District Court of the United States for the Eastern District of North Carolina, at Raleigh, in and for said district, do hereby certify that the foregoing is a true and correct transcript of the record and proceeding in the matter of Federal Reserve Bank of Richmond, Plaintiff in error, vs. D. J. Malloy and J. H. Malloy, Partners trading as Malloy Brothers, Defendants in error, as the same appears from the records in my office.

Witness, my hand and official seal in the City of Raleigh, N. C., this 15th day of March, 1923.

S. A. ASHE,
(Seal of Court) Clerk U. S. District Court.

On the same day, to-wit: March, 22, 1923, the original petition for writ of error, order allowing writ of error, writ of error, writ of error bond, and citation, are certified up under Sec. 7 of Rule 14.

Same day, the appearance of M. G. Wallace is entered for the Plaintiff in Error.

March 30, 1923, twenty-five copies of the printed record are ~~filed~~ *filed*.

April 3, 1923, the appearance of Robert H. Dye and Branch & Snow is entered for the Defendants in Error.

ARGUMENT OF CASE.

May 24, 1923 (May Term, 1923,) cause came on to be heard before Woods and Waddill, Circuit Judges, and Groner, District Judge, and is argued by counsel and submitted.

OPINION.

Filed July 12, 1923.

UNITED STATES CIRCUIT COURT OF APPEALS.

FOURTH CIRCUIT.

No. 2106.

Federal Reserve Bank of Richmond, Plaintiff in Error,

versus

D. J. Malloy & J. H. Malloy, Trading as Malloy Brothers, Defendants in Error.

In Error to the District Court of the United States for the Eastern District of North Carolina, at Raleigh.

(Argued May 24, 1923. Decided July 12, 1923)

Before Woods and Waddill, Circuit Judges, and Groner, District Judge.

M. G. Wallace (J. C. Little on brief) for Plaintiff in Error, and Robert H. Dye (Branch & Snow on brief) for Defendant in Error.

Waddill, Circuit Judge:

This action was instituted in the Superior Court of Cumberland County, North Carolina, by the defendants in error, D. J. Malloy and J. H. Malloy, partners doing business under the firm name of Malloy Brothers, citizens of the State of Georgia, against the plaintiff in error, the Federal Reserve Bank, of Richmond, a corporation organized under the act of congress known as the Federal Reserve Act, and Napier G. H. Balfour, a citizen and resident of Cumberland, North Carolina. The purpose of the suit was to recover from the plaintiff in error the sum of $9,000.00, the amount of a certain check drawn by the said Napier H. G. Balfour on the Bank of Lumber Bridge of Lumber Bridge, N. C., in favor of the defendants in error in payment of an indebtedness due them by said Balfour, secured upon real estate in Cumberland county. The check had been entrusted to plaintiff in error for collection in due course of its banking business, and the amount of which was lost to defendants in error, as claimed by them, by reason of the negligence and want of business care exercised by the plaintiff in error; the specific charge being that plaintiff in error

negligently mailed said check to the Bank of Lumber Bridge upon which it was drawn, which charged the same to the account of Balfour, the drawer, who had to his credit ample funds to meet the check, and negligently accepted in payment therefor a draft drawn by the Bank of Lumber Bridge on the Atlantic Bank and Deposit Company, of Greensboro, N. C., in favor of the Federal Reserve Bank of Richmond, the plaintiff in error, for said $9,000.00. This draft was not paid when presented, for lack of funds, and the Bank of Lumber Bridge in a few days suspended, and a receiver was appointed for it. Defendants in error further averred that plaintiff in error carelessly and negligently omitted to give them prompt and timely notice of the failure to receive the amount of said check sent it for collection, which would have enabled them to collect the same, and that the plaintiff in error was liable as well for its negligence in forwarding said check for $9,000.00 to the bank on which it was drawn, as for accepting something other than money therefor, which proved valueless.

The case was, by appropriate proceeding, removed to the United States District Court for the Eastern District of North Carolina where the same was docketed, duly matured, and issue joined upon the pleadings. A trial by jury was waived by written stipulation of parties by counsel duly filed, and all questions of law and fact submitted to the judge of the trial court for determination, all parties asking for findings of fact and judgment in their favor. After full consideration, the court found in favor of the defendants in error against the plaintiff in error, and also found in favor of the defendant Balfour, and rendered judgment against the plaintiff in error in favor of the defendants in error for $9,000.00, with interest and costs.

This writ of error is presented by the Federal Reserve Bank of Richmond, to review and reverse this judgment. The learned judge of the court below made a full and comprehensive finding of facts, the accuracy of which is conceded, and not challenged in any material respect, and upon the facts thus ascertained, rendered the opinion and judgment sought to be reviewed and reversed. (*Malloy Bros.* vs. *Federal Reserve Bank*, 281 Fed. 997.)

The assignments of error raise in substance the question of whether the district court erred in holding plaintiff in error guilty of negligence in the circumstances, and that it was without authority to receive in settlement of the check in its hands for collection, the draft accepted by it upon the Atlantic Bank and Trust Company, the taking of which resulted in the loss sued for.

After most careful consideration, we find ourselves in full accord with the court below upon the facts, if, indeed, it may be said that there is any real dispute about them, and we accept the able and comprehensive opinion of the judge of the district court as containing a clear and correct review of the law properly applicable to the case, and neither desire nor deem it necessary to add anything to what is there said.

The decision of the district court will be affirmed, with costs.

Affirmed.

JUDGMENT.

Filed and Entered July 12, 1923.

UNITED STATES CIRCUIT COURT OF APPEALS,

FOURTH CIRCUIT.

No. 2106.

Federal Reserve Bank of Richmond, Plaintiff in Error,

vs.

D. J. Malloy & J. H. Malloy, Trading as Malloy Brothers, Defendants in Error.

In Error to the District Court of the United States for the Eastern District of North Carolina.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of North Carolina, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed with costs.

EDMUND WADDILL, Jr.
U. S. Circuit Judge.

July 12th, 1923.

ORDER STAYING MANDATE.

Filed August 9, 1923.

UNITED STATES CIRCUIT COURT OF APPEALS.

FOURTH CIRCUIT.

No. 2106.

Federal Reserve Bank of Richmond, Plaintiff in Error,

vs.

D. J. Malloy & J. H. Malloy, Trading as Malloy Brothers, Defendants in Error.

Error to the District Court of the United States for the Eastern District of North Carolina, at Raleigh.

The plaintiff in error in the above entitled case having made application for a writ of error,

It is Ordered that the mandate of this Court in the above case be, and the same is hereby, stayed pending the consideration of the said application for a writ of error.

EDMUND WADDILL, JR.,
U. S. Circuit Judge.

August 9th, 1923.

PETITION FOR WRIT OF ERROR.

Filed September 1, 1923.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH JUDICIAL CIRCUIT, AT RICHMOND.

Federal Reserve Bank of Richmond, Plaintiff in Error,

vs.

D. J. Malloy & J. H. Malloy, Partners, trading as Malloy Brothers, Defendants in Error.

The Federal Reserve Bank of Richmond, plaintiff in error in the above entitled cause, respectfully shows:

1. That this action was a suit of a civil nature arising under the laws of the United States, and especially under a certain Act of Congress known as the Federal Reserve Act, in that the plaintiff in error is and was a corporation organized and doing business under that Act, and the defendant in error sought to enforce against it a liability incurred, or alleged to have been incurred, in the course of its operation under the above mentioned Act of Congress and the Regulations of the Federal Reserve Board made in pursuance thereof. The jurisdiction of the District Court was invoked solely upon the above mentioned ground.

2. The amount in controversy, exclusive of interest and costs, exceeds the sum or value of one thousand dollars; that is to say, the amount in controversy is the sum of $9,000.00 (nine thousand dollars), with interest from December 14, 1920, and costs, for which amount judgment was rendered by the District Court of the United States for the Eastern District of North Carolina, which judgment was affirmed by the United States Circuit Court of Appeals for the Fourth Judicial Circuit.

3. The said judgment is one in which the decision of the Circuit Court of Appeals is not made final by the laws of the United States, and the Federal Reserve Bank

of Richmond, plaintiff in error, desires to have the decision in the said case reviewed by the Supreme Court of the United States, because of the errors more particularly assigned and pointed out in the Assignment of Errors presented and filed with this petition, to which reference is hereby made.

Wherefore, the Federal Reserve Bank of Richmond respectfully prays that a writ of error be allowed to it in the above entitled cause, directing the Clerk of the United States Circuit Court of Appeals for the Fourth Judicial Circuit to send the records and proceedings in this case, with all things concerning the same, to the Supreme Court of the United States, in order that the errors complained of in the Assignment of Errors, herewith filed by the plaintiff in error, may be reviewed, and if error be found, corrected according to the laws and customs of the United States.

And your orator, the Federal Reserve Bank of Richmond, will ever pray, etc.

FEDERAL RESERVE BANK OF RICHMOND.

By Counsel,

M. G. WALLACE.

ASSIGNMENT OF ERRORS.

Filed September 1, 1923.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH JUDICIAL CIRCUIT, AT RICHMOND.

Federal Reserve Bank of Richmond, Plaintiff in Error,

vs.

D. J. Malloy & J. H. Malloy, Partners, trading as Malloy Brothers, Defendants in Error.

Comes now the Federal Reserve Bank of Richmond, for the purpose of making application for a writ of error to the Supreme Court of the United States, and files

the following assignment of errors in the opinion and judgment of the United States Circuit Court of Appeals for the Fourth Judicial Circuit, delivered and entered on July 12, 1923, upon which assignment of errors it expects to rely in the prosecution of a writ of error to the Supreme Court of the United States in the above entitled cause.

1. The Circuit Court of Appeals erred in affirming the judgment entered by the District Court of the United States for the Eastern District of North Carolina, and in not reversing said judgment, for that it appeared from the uncontradicted evidence in the said case that the Federal Reserve Bank of Richmond, plaintiff in error, was in no way liable to the defendant in error, and the said District Court was moved to so find and rule, but the said District Court refused to so find and rule, and gave judgment against the plaintiff in error.

2. The Circuit Court of Appeals erred in failing and refusing to set aside the judgment entered by the District Court of the United States for the Eastern District of North Carolina, for that the said District Court found as follows:

"There is no evidence of any custom existing either in Virginia or North Carolina, by which collecting banks are authorized to accept from their agents or sub-agents, or from the drawee banks in settlement of collections sent them, anything other than money in settlement of such collections. Plaintiff, J. H. Malloy, testified that he was engaged in the lumber business and knew 'very little about the workings of a bank—did not instruct the Perry Banking Co.—just sent the check down there for credit during the course of business.'"

which finding made by the said District Court was wholly without evidence to support it and contrary to and in conflict with the facts as shown by the uncontradicted testimony of Edward Waller, Jr., M. W. Bell, J. E. Wallace, and others, from which testimony it appeared that there was a custom existing and generally known to all Federal reserve banks, commercial banks and others engaged in the business of collecting checks in Virginia,

North Carolina, and elsewhere, whereby banks made settlement with each other for collections sent to them by means of exchange drafts drawn upon their correspondents.

3. The Circuit Court of Appeals erred in affirming the judgment entered in this cause by the District Court of the United States for the Eastern District of North Carolina, and in not reversing said judgment, for that it appeared from the facts, as found and stated by the District Court of the United States for the Eastern District of North Carolina, that the Federal Reserve Bank of Richmond was in no way liable to the defendant in error; yet, nevertheless, the said District Court of the United States for the Eastern District entered judgment in favor of the defendant in error and against the plaintiff in error.

Because of the said errors the Federal Reserve Bank of Richmond prays that the order and judgment of the said Circuit Court of Appeals and of the District Court of the United States for the Eastern District of North Carolina, entered herein on July 12, 1923, may be reviewed by the Supreme Court of the United States and reversed.

FEDERAL RESERVE BANK OF RICHMOND.

By Counsel,

M. G. WALLACE.

ODER ALLOWING WRIT OF ERROR.

Filed September 1, 1923.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH JUDICIAL CIRCUIT, AT RICHMOND.

Federal Reserve Bank of Richmond, Plaintiff in Error,

vs.

D. J. Malloy & J. H. Malloy, Partners, trading as Malloy Brothers, Defendants in Error.

The foregoing petition is granted and a writ of error and *supersedeas* allowed, as prayed for, upon plaintiff in error giving bond, according to law, in the sum of $12,000.00.

It is further ordered that the record to be transmitted in this case shall be the same as the record upon which this case was heard in the Circuit Court of Appeals for the Fourth Judicial Circuit, together with a transcript of all proceedings had and taken in the said case in the said Circuit Court of Appeals and subsequent thereto, including the opinion of the said Circuit Court of Appeals. The Clerk of the said Circuit Court of Appeals shall transmit to the Clerk of the Supreme Court of the United States a transcript of the record made up as above stated.

Richmond, Va., Sept. 1st, 1923.

EDMUND WADDILL, JR.,
Judge of the United States Circuit
Court of Appeals for the Fourth
Circuit.

WRIT OF ERROR.

Issued September 1, 1923.

UNITED STATES OF AMERICA, SS:

The President of the United States,
To the Honorable the Judges of the United States Circuit Court of Appeals for the Fourth Circuit, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court of Appeals before you, or some of you, between the Federal Reserve Bank of Richmond, Plaintiff in Error, and D. J. Malloy & J. H. Malloy, Trading as Malloy Brothers, Defendants in Error, a manifest error hath happened, to the great damage of the said plaintiff in error as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid,

in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness, the Honorable William H. Taft, Chief Justice of the United States, this 1st day of September, in the year of our Lord one thousand nine hundred and twenty-three.

CLAUDE M. DEAN,
Clerk of the United States Circuit Court
(Seal of Court) of Appeals for the Fourth Circuit.

Allowed by

EDMUND WADDILL, JR.,
Judge U. S. Circuit Court of Appeals,
Fourth Circuit

SERVICE OF WRIT OF ERROR.

The foregoing writ of error is served by lodging a copy thereof for the adverse party, on the first day of September, 1923, in the Clerk's Office of the said United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, Virginia, where the record remains.

Attest:

CLAUDE M. DEAN,
Clerk, U. S. Circuit Court of Appeals,
Fourth Circuit.

CITATION.

Issued September 1, 1923.

UNITED STATES OF AMERICA, SS:

The President of the United States,
To D. J. Malloy & J. H. Malloy, Trading as Malloy Brothers, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the United States Circuit Court of Appeals for the Fourth Circuit, wherein Federal Reserve Bank of Richmond is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edmund Waddill, Jr., Judge of the United States Circuit Court of Appeals for the Fourth Circuit, this 1st day of September, in the year of our Lord one thousand nine hundred and twenty-three.

EDMUND WADDILL, JR.,
Judge of the United States Circuit
Court of Appeals for the Fourth
Circuit

SERVICE OF CITATION.

Delivery of a copy of the above citation acknowledged and legal service accepted this fifth day of September, 1923.

ROBERT H. DYE,
Attorney for D. J. & J. H. Malloy,
trading as Malloy Bros., defendants
in error

STIPULATION FOR MAKING UP RECORD.

Filed September 1, 1923.

In the United States Circuit Court of Appeals for the Fourth Judicial Circuit, at Richmond.

Federal Reserve Bank of Richmond, Plaintiff in Error,

vs.

D. J. Malloy & J. H. Malloy, Partners, trading as Malloy Brothers, Defendants in Error.

It is hereby stipulated and agreed by and between the Federal Reserve Bank of Richmond, plaintiff in error, by M. G. Wallace, its Counsel, and D. J. Malloy and J. H. Malloy, Partners, trading as Malloy Brothers, defendants in error, by R. H. Dye, their Counsel, that the following portions of the record in the above entitled case shall constitute the transcript of the record on writ of error from the Supreme Court of the United States to the United States Circuit Court of Appeals for the Fourth Circuit, and that the clerk of that court shall transmit only the papers designated herein to the clerk of the Supreme Court of the United States as a return to the writ of error.

(A) Transcript of the record as printed in the United States Circuit Court of Appeals for the Fourth Circuit, containing:

(1) The complaint of the plaintiff.

(2) The answer of both defendants.

(3) Stipulation of Counsel waiving trial by jury.

(4) Statement of facts and opinion filed by the District Court of the United States for the Eastern District of North Carolina.

(5) Judgment of the District Court of the United States for the Eastern District of North Carolina.

(6) Bills of Exceptions taken by the Federal Reserve Bank of Richmond—Nos. 1, 2 and 3.

(7) Stipulation for making up record for return to writ of error from the United States Circuit Court of Appeals for the Fourth Circuit to the District Court of the United States for the Eastern District of North Carolina.

(8) Memorandum of date of petition for writ of error from the United States Circuit Court of Appeals for the Fourth Circuit to the District Court of the United States for the Eastern District of North Carolina.

(9) Memorandum of date of order allowing such writ of error.

(10) Memorandum of date of writ of error and date when copy thereof was lodged in the office of the clerk of the District Court.

(11) Memorandum of the date, penalty, and names of obligors, and condition of the appeal bond given upon suing out the writ of error from the United States Circuit Court of Appeals for the Fourth Circuit to the District Court of the United States for the Eastern District of North Carolina.

(12) Memorandum of date of citation and date of waiver of service.

(13) Order of District Court of the United States for the Eastern District of North Carolina, transmitting record to the United States Circuit Court of Appeals for the Fourth Circuit.

(14) Certificate of the Clerk of the United States District Court for the Eastern District of North Carolina.

(B) Opinion filed by the United States Circuit Court of Appeals for the Fourth Judicial Circuit, dated July 12, 1923.

(C) Order entered thereon.

(D) Assignment of Errors to judgment of the United States Circuit Court of Appeals for the Fourth Circuit.

(E) Petition for writ of error to United States Circuit Court of Appeals for the Fourth Circuit and order allowing the writ.

(F) Stipulation for making up the record to be certified by the Supreme Court of the United States.

(G) Bond executed by Federal Reserve Bank of Richmond, plaintiff in error, upon suing out writ of error to the judgment of the United States Circuit Court of Appeals for the Fourth Judicial Circuit.

Witness our hands this first day of August, 1923.

M. G. WALLACE,
Counsel for Federal Reserve Bank of Richmond.
ROBERT H. DYE,
Counsel for D. J. & J. H. Malloy.

WRIT OF ERROR AND SUPERSEDEAS BOND.

Filed Sept. 7, 1923.

Know all men by these presents, That we, The Federal Reserve Bank of Richmond, as principal, and National Surety Company, ... as sureties, are held and firmly bound unto D. J. Malloy and J. H. Malloy, partners, trading as Malloy Brothers in the full and just sum of Twelve thousand dollars, ($12,000.00) to be paid to the said D. J. Malloy and J. H. Malloy, partners, trading as Malloy Brothers, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 4th day of September, in the year of our Lord one thousand nine hundred and twenty-three.

Whereas, lately at a United States Circuit Court of Appeals for the Fourth Judicial Circuit in a suit depending in said Court, between Federal Reserve Bank

of Richmond, plaintiff-in-error, and D. J. Malloy and J. H. Malloy, partners, trading as Malloy Brothers, defendant-in-error, a judgment was rendered against the said Federal Reserve Bank of Richmond and the said Federal Reserve Bank of Richmond having obtained a writ of error and filed a copy thereof in the Clerk's office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said D. J. Malloy and J. H. Malloy, partners, trading as Malloy Brothers, citing and admonishing them to be and appear at the Supreme Court of the United States, to be holden at Washington, within thirty days from September 1, 1923.

Now, the condition of the above obligation is such, That if the said Federal Reserve Bank of Richmond, shall prosecute said writ of error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

FEDERAL RESERVE BANK OF RICHMOND,
By GEO. J. SEAY, Governor. (Seal)
NATIONAL SURETY CO., (Seal)
By ROBERT I. BOSWELL, Atty.-in-fact. (Seal)
(Seal of National Surety Co.)

Sealed and delivered in presence of—

M. G. WALLACE,
as to Federal Reserve Bank of Richmond.
(Seal of Federal Reserve Bank)

CLAUDE M. DEAN, Clerk,
U. S. Circuit Court of Appeals,
Fourth Circuit, as to Natl. Surety Co.

Approved by—

EDMUND WADDILL, JR.,
Judge U. S. Circuit Court of Appeals,
Fourth Circuit.

F. 201½ 10M 7-18.

POWER OF ATTORNEY.

Filed with Writ of Error Bond.

Know all Men by These Presents, that the Natioanl Surety Company, a corporation duly organized and ex-

isting under the laws of the State of New York, and having its principal offices in the City of New York, hath made, constituted and appointed, and does by these presents make, constitute and appoint Robert I. Boswell, of Richmond, and State of Virginia its true and lawful Attorney, with full power and authority hereby conferred in its name, place and stead, to sign, execute and acknowledge any and all bonds required to be given in Court Proceedings or Actions at Law, not exceeding One Hundred Thousand ($100,000) Dollars each in amount and to bind the National Surety Company thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the common seal of the Company, and duly attested by its Secretary, hereby ratifying and confirming all the acts of said Attorney pursuant to the power herein given. This Power of Attorney is made and executed pursuant to and by authority of the following By-Law adopted by the Board of Directors of the National Surety Company at a meeting duly called and held on the second day of February, 1909.

"ARTICLE XII. Resident Officers and Attorneys-in-Fact.

"SECTION 1. The President, First Vice-President or any other Vice-President may from time to time appoint Resident Vice-Presidents, Resident Assistant Secretaries and Attorneys-in-Fact to represent and act for and on behalf of the Company, and either the President, First Vice-President, or any other Vice-President, the Board of Directors or the Executive Committee may at any time remove any such Resident Vice-President, Resident Assistant Secretary or Attorney-in-Fact and revoke the power and authority given him.

"SECTION 4 Attorneys-in-Fact. Attorneys-in-Fact may be given full power and authority to execute for and in the name and on behalf of the Company, any and all bonds, recognizances, contracts of indemnity and other writings obligatory in the nature of a bond, recognizance or conditional undertaking, and any such instrument executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed by the President and sealed and attested by the Secretary."

And, at a meeting of the Board of Directors of the National Surety Company, duly called and held on the Seventh day of March, A. D., 1912, a quorum being present, the following additional section to the foregoing By-Law was adopted:

"SECTION 6. Attorneys-in-Fact. Attorneys-in-Fact are hereby authorized to verify any affidavit required to be attached to bonds, recognizances or contracts of indemnity, policies of insurance and all other writings obligatory in the nature thereof, and are also authorized and empowered to certify to a copy of any By-Law contained in Articles VI, XII and XIII of the By-Laws of the Company."

In Witness Whereof, the National Surety Company has caused these presents to be signed by its Vice-President and its corporate seal to be hereto affixed, duly attested by its Assistant Secretary, this 30th day of October, A. D., 1922.

(Seal) NATIONAL SURETY COMPANY,
By J. L. MEE, Vice-President.

Attest:

M. CROOKE,
Assistant Secretary.

Stamps affixed to first original and duly canceled.

STATE OF NEW YORK,
County of New York, ss:

On this 30th day of October, A. D., 1922, before me personally came J. L. Mee to me known, who, being by me duly sworn, did depose and say, that he resides in the City of New York; that he is the Vice-President of the National Surety Company, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument in such corporate seal; that it was so affixed by order of the Board of Directors of said cor-

poration, and that he signed his name thereto by like order.

M. M. MILLER,
Notary Public.

(Seal)

STATE OF NEW YORK,
County of New York, ss:

I, M. Crooke, Assistant Secretary of the National Surety Company, do hereby certify that the above and foregoing is a true and correct copy of a power of attorney, executed by said National Surety Company, which is still in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Company, at the City of New York, this 30th day of October, A. D., 1922.

M. CROOKE,
Assistant Secretary.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,
Fourth Circuit, ss:

I, Claude M. Dean, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the foregoing is a true transcript of the record and proceedings in the therein entitled cause as the same remains upon the records and files of the said Circuit Court of Appeals.

In Testimony Whereof, I hereto set my hand and affix the seal of the said United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, Virginia, this 13th day of September, A. D., 1923.

CLAUDE M. DEAN,
Clerk U. S. Circuit Court of Appeals,
Fourth Circuit.

(Seal of Court)